



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL APPEAL NO. 24 OF 2010**

**ELISIO NYAGA ALIAS**

**WABENGI WARUCHA.....APPELLANT**

**VERSUS**

**M'KUURA KIRAITHE.....RESPONDENT**

**J U D G M E N T**

*(Being an appeal against the award of Provincial Lands Dispute Appeals Committee No. 57 of 1999 at Embu and read in Court on 20.9.2002 by the Senior Principal Magistrate at Meru in CMC's Land Dispute Case No.30 of 1999).*

In the appellant's memorandum of appeal dated 16.3.2010, he prays:

1. *That this appeal be allowed.*
2. *An order be issued to the effect that the Provincial Land Dispute Appeals Committee and District Land Dispute Tribunal had no jurisdiction to hear and/or determine the respondent's claim against the appellant.*
3. *The decision of the Embu Appeals Committee be quashed.*
4. *Costs and interest.*

The Memorandum of Appeal predicates the appeal upon the following grounds:-

1. *The Provincial Land Dispute Appeals Committee erred in Law in basing their decision on the award from the Meru South District Land Dispute Tribunal, Muthambi Division which had no jurisdiction to hear and determine a matter relating to title and ownership of land parcel NO. MUTHAMBI/GATUA/132 registered in the name of the Appellant.*
2. *The Provincial Land Dispute Appeals Committee erred in law in basing their finding in the award of Meru South District Land Dispute Tribunal, Muthambi Division, while neither the Provincial Land Dispute Appeals Committee nor the Meru South District Land Dispute Tribunal, Muthambi division had jurisdiction to deal with a claim relating to adverse possession.*
3. *The Provincial Land Disputes appeals Committee at Embu erred in law in holding that the Appellant do transfer 2½ acres from Appellant's land parcel NO.MUTHAMBI/GATUA/132 whereas it had no jurisdiction to do so.*

4. ***The Provincial Land Dispute Appeals Committee erred in Law in upholding the decision of the Meru South District Land Dispute Tribunal, Muthambi Division to transfer 2½ acres to the respondent from the appellant's land parcel NO.MUTHAMBI/GATUA/132 whereas none of them had jurisdiction to do so.***
5. ***The Provincial Land Dispute Appeals Committee erred in law entertaining a claim involving title under the Registered Land Act Cap 300 laws of Kenya while the appellant is first registered owner of land parcel No. MUTHAMBI/GATUA/132.***
6. ***The Provincial Land Dispute Appeals Committee erred in law in deciding on a matter relating to title registered under Cap 300 Laws of Kenya whereas it had no jurisdiction to do so.***
7. ***The Provincial Land Dispute Appeals Committee and the District Land Dispute Tribunal, Muthambi Division awards offend the Provisions of Section 27, 28 and 159 Cap 300 of the Laws of Kenya.***
8. ***The Provincial Land Dispute Appeals Committee and the District Land Dispute Tribunal Muthambi division erred in arbitrating on ownership of the Appellant's land whereas it had no such jurisdiction to do so.***
9. ***The proceedings in Provincial Land Dispute Appeals Committee and District Land Dispute Tribunal Muthambi Division are nullity.***
10. ***The Provincial Land Dispute Appeals Committee and District Land Dispute Tribunal award is against the law.***

The hearing of this application was adjourned several times to allow the respondent, who represents himself in this matter in person, to prepare his case. Each time, the respondent said he was not ready and gave one excuse or another.

The case was heard orally on 3.4.2014. The appellant argued grounds 1 to 10 in the Memorandum of Appeal. The grounds generally argued that the Provincial Committee at Embu acted without jurisdiction and ultra vires provisions of the applicable law.

On his side, the respondent did not respond to the issues raised in the Memorandum of Appeal. I note that he has been instrumental in delaying the hearing of this appeal. The main thrust of his case was that the parties should go to the Njuri Ncheke. Unfortunately, I have no jurisdiction to refer this suit to the Njuri Ncheke. My jurisdiction is confined to the hearing of the Appellant's appeal.

I deplore the fact that the respondent has engaged the Court in unnecessary theatrics, the most egregious of which took place on 22.1.2014 when the respondent threatened to bewitch and/or otherwise kill the advocate representing the appellant. This serious matter was referred the DCIO Meru. A report was filed in Court. It was reported that the respondent had admitted making the threats directed at Mr. Desderio Nyagah Nyamu, the appellant's advocate. The DCIO's report indicated that the respondent had apologized to Mr. Nyamu who had accepted the respondent's apologies. It recommended that due to the respondent's age, health and apologies, this matter should be closed subject to the directions of the Court. The Court agreed to deem the matter closed.

As I have already said, the respondent has not responded to any of the grounds of appeal proffered by the appellant.

There are cases galore holding that Land Dispute Tribunals and Provincial Appeals Committees (now both defunct) had no jurisdiction to hear and determine questions of ownership and title to land registered under the Registered Land Act (now repealed). Where they did so, they acted ultra vires the statutes and their entire proceedings became a nullity once they pronounced themselves on questions of ownership of title.

Examples of such cases are:

1. ***Republic versus Ololunga Land Disputes Tribunal ex parte Isiah Kiplangat Cheluget (Nairobi: HC Misc. C 926 of 1999) – In this case Aganyanya, J, held that tribunals should not encroach on land registered in individual's name under the Registered Land Act.***
2. ***Republic Versus Imenti Land Disputes Tribunal et al (Meru JR 82 of 2009). In this Case Lady Justice Mary Kasango, J, quashed the decision of the tribunal for having acted without jurisdiction by interfering with land registered under the Registered Land Act.***
3. ***Jidraph Nyoro Kang'ethe versus Silas Kangethe Nyoro, Civil Appeal No. 109 of 2009 – In this case the Court held that the Land Disputes Tribunal Act, did not confer upon the tribunals powers to interfere with the interest of a registered proprietor whose title is protected by Sections 27 and 28 of the Registered Land Act.***

There are many other cases where Courts have clearly pronounced themselves in matters relating to the jurisdiction of Land Disputes Tribunals. I need, therefore, not re-invent the wheel. The provincial Land Disputes Appeals Committee and the District Land Disputes Tribunal had no jurisdiction to hear and determine a matter relating to title and ownership of land registered under the Registered Land Act. In the circumstances:-

1. ***This appeal is allowed***
2. ***The decision of the Embu Provincial Appeals Committee is hereby quashed.***

Considering the poor health and the advanced age of the respondent and also considering the fact that it is the Provincial Appeals Committee and the District Disputes Tribunal which had acted without jurisdiction, costs will not be awarded to any of the parties. They will bear their own costs.

It is so ordered.

**Delivered in Open Court at Meru this 1st day of July, 2014 in the presence of:**

Cc. Lilian/Daniel

Nyamu Nyaga for Appellant

M'Kuura Kiraithe - Respondent

**P. M. NJOROGE**

**JUDGE**