



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
HIGH COURT CIVIL APPEAL NO. 137 OF 2013
KIRIIRO MUKETHA KAAJJA
VERSUS
KAIBIRU KIRUMBA

DIRECTIONS ON JURISDICTION REGARDING APPEALS FROM
PROVINCIAL LAND DISPUTES APPEALS COMMITTEES

1. This matter came up for directions from the Registry on 7.10.2014. It concerns files coming from the Eastern Province Land Disputes Appeals Committee in cases where appeals had not been completed.

2. Section 8 of the Land Disputes Tribunals Act deals with Appeals to the Appeals Committee and to the High Court.
3. Section 8(8) states:

“The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.”

4. Section 8(9) States:

“Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of Law within sixty days from the date of the decision complained:

Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary Law) is involved.”

5. Section 8 (10) states:

“A question of Customary Law shall for all purposes under this Act be deemed to be a question of fact”

6. It is clear that this court can only take appeals from the defunct Provincial Appeals Committees on issues of law alone. Where the Provincial Appeals Committees had not concluded Appeals from District Tribunals, such matters involve both issues of fact and law.

7. Jurisdiction as stated in the case of **“The MV SS Lilian” [1989] KLR 1** is everything. I quote the Hon. Justice Nyarangi, J., as opining. “Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

8. The Supreme Court, in application No. 2 of 2011, Samuel Kamau Macharia & Another Vs Kenya Commercial Bank, at paragraph 68 eruditely and laconically stated:

“A Court's Jurisdiction follows from either the Constitution or Legislation or both. Thus, a Court of Law can only exercise Jurisdiction conferred by the Constitution or other written law. It cannot arrogate to itself Jurisdiction exceeding that which is conferred upon it by law.”

9 The ELC hears appeals from concluded appeals of Provincial Appeals Committees on issues of law only. Unconcluded appeals spawn both issues of fact and law. Furthermore, section 8 (9) of the defunct Land Disputes Tribunal Act makes it clear that appeals from Provincial Appeals Committees are against decisions of the Appeals Committee. Obviously, this provision does not countenance hearing matters in which decisions have not been made.

10. In the circumstances, I find that the ELC has no jurisdiction to hear appeals which had not been concluded by the defunct Provincial Appeals Committees. Such cases should not be referred to this court. I reiterate that this court cannot arrogate unto itself jurisdiction which has not been anchored upon constitutional or statutory provisions.

11. This court has jurisdiction to hear appeals against decisions in matters which had been concluded by the defunct Provincial Appeals Committees before they were abolished.

12. These directions should apply to all similar cases. Let the registry and all other concerned parties be guided appropriately.

It is so ordered.

Dated at Meru this 7th day of October, 2014 in the presence of:

Daniel/Onderi

P. M. NJOROGE

JUDGE