



REPUBLIC OF KENYA

High Court at Machakos

Civil Appeal 92 of 2001

KAMUTI NTHIW'A APPELLANT

VERSUS

RICHARD MUKITI MBINDYO RESPONDENT

(Being an appeal from the ruling of the District Magistrate's Court at Makueni of Hon J.K. Kiia (DM I) in District Magistrate Case No. 2 of 2001 dated 18th July 2001)

(Before B. Thuranira Jaden J)

J U D G M E N T

The **Land Disputes Tribunal, Nzau Location in Claim No. 2 of 2001** awarded the claimant therein Land parcel No. **Mbitini/Ngetha/117**. On 20/3/2001 the lower court 'read' the award to the parties who were given 30 days within which to appeal.

On 18/7/2001 the lower court adopted the award of the **Land Disputes Tribunal** as a judgment of the court and commenced the execution process. The appellant was dissatisfied with adoption of the **Tribunal's** award as a judgment of the court and appealed to this court on the following ground:-

"The learned magistrate erred in law when he entered a judgment pursuant to the award of the Tribunal whereas the proceedings before the said Tribunal were patently unprocedural and in breach of the rules of natural justice."

The appellant prayed for the setting aside of the lower court's ruling dated 18/7/2001 which adopted the **Tribunal's** award as judgment of the court. The Appellant prayed for the substitution of the lower court's

ruling with a judgment setting aside the **Tribunal's** award.

The appeal was canvassed by way of written submissions.

The firm of **Ms Katunga Advocates** appeared for the appellant while firm of **Ms Paul Kisongo & Company Advocates** appeared for the Respondent. It was argued for the appellant that the lower court adopted the award of the **Land Disputes Tribunal** whereas the proceedings before the **Tribunal** were unprocedural and in breach of the rules of natural justice.

The role of the magistrate's court is set out in **Section 7 (2)** of the **Land Disputes Tribunal Act No. 18 of 1990** which states as follows:-

“The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”

The lower court therefore acted within its mandate when it entered judgment in accordance with the decision of the Tribunal. It was not the role of the magistrate to interpret the proceedings of the Tribunal as to whether they were procedural or not.

The party aggrieved by the decision of the **Tribunal** had 30 days within which to appeal to the **Provincial Appeals Committee** as provided under **section 8 (1)** of the **Land Disputes Tribunal Act No. 18 of 1990**.

By the time the application for the adoption of the award was filed on 18/5/01, the period for filing an appeal with the **Provincial Appeals Committee** had already lapsed.

There was no appeal to the **Provincial Appeals Committee**. No Judicial Review proceedings seem to have been instituted.

The lower court orders complained about were made within the law. The appeal has no merits and is dismissed with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **11th** day of **April** 2013.

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JUDGE