



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NYERI**

**Civil Appeal 48 of 2003**

**GIDRAPH GACHOMBA WAITITU)**

**PRISCIRAH WAMBUI WAITITU)**

**ABUAH NYAMBURA WAITITU ).....APPELLANTS**

**SCHOLAR WANGARI WAITITU)**

**Versus**

**ROSE MUTHONI KARIUKI.....RESPONDENTS**

**JUDGMENT**

There are four Appellants in this appeal and one Respondent who seem to be relatives. The appeal is against the decision of “Central Province Appeals Committee in Nyeri”. That is stated in the Memorandum of Appeal. But on checking through the record of appeal, I was not able to see any document filed from that body or how that body is associated with any of the documents filed in this appeal even if it handled an appeal No. 74 of 1999. It is said to be a body in Nyeri or a body which sat in Nyeri when it was deciding an appeal No. 74 of 1999. Nothing is said about the existence of such a body, how it is established and what it does.

To make the matter more difficult after the Memorandum of Appeal opening by stating that it contains an appeal against the decision of

***“Central Province Appeals Committee”***

when giving grounds of appeal the same Memorandum talks of

***“the Tribunal”.***

In ground one, for instance, the memorandum says

***“That the Tribunal had no jurisdiction to entertain the claim before it as it related to title to land.”***

No effort is made to reconcile the use of the words

***“Appeals Committee”***

and the word

## ***“Tribunal”***

in the appeal. I am aware the Land Disputes Tribunals Act 1990 uses the words

## ***“Appeals Committee”***

but goes on in to make it clear that it should be

## ***“Land Disputes Appeals Committee”***

The Act also uses the word ***“Tribunal”***

Otherwise the words

## ***“Appeals Committee”***

can be so many in Nyeri that one may not know which Appeals Committee one means to talk about. When the Act uses the word “Tribunal” the Act does not mix the “Tribunal” to mean same thing as “Land Disputes Appeals Committee.” Using the number 74 of 1999 I can see it on a document having the words

## **“PROVINCIAL LAND DISPUTE TRIBUNAL APPEAL COMMITTEE CENTRAL PROVINCE”**

But on that document that number is accompanied by the words achomba Waititu & 3 others v Rose Muthoni Kariuki [2005] eKLR

## ***“MURANG’A”***

In any case if that is the document containing the decision Appellants are appealing against, then this appeal has a few other problems.

Firstly, if that document contains proceedings from a Land Disputes Appeals Committee where an appeal was heard from Mathioya Land Disputes Tribunal in Muranga District then it was grossly irregular for proceedings from Mathioya Land Disputes Tribunal not to be part of the record of appeal. The appellate court should see all the record of what went on in the case from the lowest level up to the appellate court handling the case. Omitting such record is keeping from the appellate court vital information required for the court to make an informed decision.

Now like in this case, these proceedings, in fact they are not proceedings. It is just a copy of the decision only meaning that proceedings from the Land Disputes Appeals Committee is not also filed. The decision only is filed in fact making the appeal incompetent straight away.

But let me go onto say what I was saying. This copy of the decision from the Land Disputes Appeals Committee Central Province contains the number of Mathioya Land Disputes Tribunal case appealed from. It reads “Tribunal Case No. 11/76”.

That number raises questions, for example, the Appellate Court would like to know the date on which Mathioya Land Disputes Tribunal made its decision from which an appeal was filed in the Land Disputes Appeals Committee Central Province under provisions of the Land Disputes Tribunal Act. Otherwise the Land Disputes Appeals Committee may have been hearing an appeal from a decision made by a Panel of Elders under the repealed Magistrate’s Jurisdiction (Amendment) Act No. 14 of 1981. If so, was that lawful? How is that case of 1976 referred to as a Tribunal case?

Another serious omission on the part of the Appellant is a certified recent copy of the land register for parcel of land LOC. 14 KIRU/2630 – to let the court know whether it exists and if it exists will it be

lawful for the court to make the orders prayed for affecting the title? In other words, what is the state of the title today before a court order affecting that title is made? This is registered land where the title is protected under Sections 27 and 28 of the Registered Land Act and court orders should not therefore be thrown out anyhowly else they be useless or unlawful court orders.

Generally in conclusion, this is an appeal where good points of law had been raised to be answered. But the record is so thin with a number of pieces of vital information left out that the appeal has been rendered incompetent and the same is hereby dismissed with costs to the Respondent.

*Dated this 1st day of July, 2005.*

J. M. KHAMONI

JUDGE