



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**CIVIL APPEAL NO. 138 OF 2013**

MUTHIKE MWANIKI ..... APPELLANT

VERSUS

GENESIO KUBUNYA NJAGI ..... RESPONDENT

**(An Appeal From The Judgment Delivered On 25<sup>th</sup> July 2007 By Hon. Kimutai K.T – S.R.M  
At Wanguru Senior Resident Magistrate’s Court Arbitration Case No. 26 Of 2006)**

**JUDGMENT**

This appeal is against the decision of the Mwea Land Disputes Tribunal in Arbitration Case No. D26D/VOL.V/76 MWERUA/KABIRIRI/1109 dated 24<sup>th</sup> July 2006 and adopted on 25<sup>th</sup> January 2007 by the Resident Magistrate’s Court at Wanguru in Arbitration Case No. 26 of 2006.

The brief facts in this appeal are that the appellant and the Respondent had a dispute over the ownership of a parcel of land Known as MWERUA/KABIRIRI/1109. The dispute was heard by the Land Disputes Tribunal Mwea under the provisions of the now repealed Land Disputes Tribunal Act. After hearing the dispute, the Tribunal made an award dated 24<sup>th</sup> July 2006 directing that the land should revert back to the Respondent herein who was the original owner and the title deed issued to the appellant herein be revoked because the same was obtained fraudulently. That award was made an order of the Court on 25<sup>th</sup> January 2007 under **Section 7(2) of the repealed Land Disputes Act** and a decree issued.

Under **Section 8(1) of the repealed Land Disputes Tribunal Act**, a party aggrieved by the decision of the Tribunal had thirty days within which to appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated. Thereafter, under **Section 8(9) of repealed Land Disputes Tribunal Act**, a party may appeal from the decision of the Appeals Committee to the High Court on points of law within sixty days from the date of the decision complained of. It is clear from the record herein that the appellant herein did not appeal from the decision of the Tribunal to the Appeals Committee as he was entitled to under **Section 8(1) of the Land Disputes Tribunal Act** which was still in force in 2007 when the award was adopted by the Court at Wanguru. Instead, some six (6) years later on 19<sup>th</sup> September 2013, the appellant obtained leave to file this appeal out of time.

Having obtained that leave, the appellant filed this appeal on 22<sup>nd</sup> November 2013 raising the following grounds:-

1. ***That the Mwea Land Disputes Tribunal lacked jurisdiction to adjudicate on a dispute involving ownership or title to land***
2. ***That the Mwea Land Disputes Tribunal erred in law when it, without jurisdiction, purported to deny and abrogate the registered proprietor’s (appellant’s) Statutory rights over the parcel of***

*land comprised in Title Number MWERUA/KABIRIRI/1109 by ordering revocation of the said title*

3. *That the Mwea Land Disputes Tribunal erred in law when it purported to entertain and determine proceedings in respect of which the time for bringing such proceedings had lapsed and which proceedings it was barred from entertaining, even if it had jurisdiction to do so, by dint of the law of limitation of act.*

The appeal was canvassed by way of written submissions.

I have considered the appeal, the records herein, the submissions by Ndungu Githuku advocate for the appellant and Enonda Makoloo Makori advocate for the respondent as well as the law.

When the award subject of this appeal was adopted by the Resident Magistrate's Court at Wanguru at Wanguru in Arbitration Case No. 26 of 2006, the *Land Disputes Tribunal Act* was then the applicable law until its repeal in 2011 with the coming into force of the *Environment and Land Court Act*. That means, therefore, that the appellant's only recourse was to invoke the provisions of *Section 8(1) of the repealed Land Disputes Act* and appeal against that award to the Appeals Committee. The appellant did not take that route and it is not clear why he did not do so. No appeal lies to this Court from a decision of the *Land Disputes Tribunal Act* (repealed). An appeal could only lie to the Appeals Committee and thereafter to this Court on points of law within sixty days. I have considered the cases cited by Ndungu Githuku advocate for the appellant and more so the case of *MARY BASWETI VS SAULO ONDIEKI AND ANOTHER ELC APPEAL NO. 6 of 2013 (KISII)*. That decision is distinguishable from this case because in the *BASWETI* case (supra) Okong'o J. was dealing with an appeal from the decision of the Appeals Committee and therefore the appeal was properly before the Judge in terms of the *Practice Directions* issued by the Chief Justice on 9<sup>th</sup> November 2012 under the transitional provisions of the *Environment and Land Court Act 2011*. It is of course the law that a Land Disputes Tribunal had no jurisdiction to entertain a dispute over registered land and even proceed to order the revocation of a title as the Mwea Land Disputes Tribunal purported to do in the case involving these parties as Mr. Githuku has rightly observed and as was stated by the Court of Appeal in the case of *JOTHAM AMUNAVI VS THE CHAIRMAN SABATIA DIVISION LAND DISPUTES TRIBUNAL AND ANOTHER COURT OF APPEAL CIVIL APPEAL NO. 256 of 2002*. However, those issues can only be properly canvassed when the appeal is properly before this Court. As I have stated above, the appeal is not properly before this Court.

What about the leave granted in September 2013 to file this appeal? It's true that leave was granted to the appellant to file this appeal out of time. It is also true that the Court of Appeal has held that the repealed *Land Disputes Tribunal Act* has no provision granting the High Court powers to extend time within which an appeal from the decisions of Appeal Committee can be filed. The Court of Appeal held that the *Land Disputes Tribunal Act* is a special legislation that was enacted expressly to govern the jurisdiction and the procedure of the Land Disputes Tribunal and as such, that Act must be construed and applied strictly and therefore, the *Civil Procedure Act* is not applicable – *GILBERT NJAGI VS JANE NJAGI C.A CIVIL APPEAL NO. 209 of 2011 (NYERI)*. It follows therefore that the High Court cannot similarly enlarge time within which an appeal can be filed to the Provincial Appeals Committee against an order of the Land Disputes Tribunal. By virtue of the doctrine of stare decisis which is a fundamental aspect of our legal systems, the decision of the Court of Appeal is binding on this Court and a Court can only depart from this position where there is a clear distinction between two cases based on their peculiar circumstances. I see no reason to depart from the *GILBERT NJAGI* case (supra). It is clear therefore that leave ought not to have been granted and the same was not obtained in accordance with the law and this appeal is not properly before this Court.

In the circumstances, the order that commends itself to me in this case is to have the appeal struck out. Since leave was granted by this Court, I direct that each party shall meet their own costs. It also follows that the injunctive orders issued on 13<sup>th</sup> February 2014 following the appellant's application dated 7<sup>th</sup> January 2014 are hereby vacated.

It is so ordered.

**B.N. OLAO**

**JUDGE**

**17<sup>TH</sup> MARCH, 2015**

17/3/2015

Before

B.N. Olao – Judge

Gichia – CC

Mr. Githuka for Appellant – present

Mr. Maina for Makori for Respondent – present

COURT: Judgment delivered this 17<sup>th</sup> day of March 2015 in open Court.

Mr. Githuka for Appellant present

Mr. Maina for Mr. Makori for Respondent present.

**B.N. OLAO**

**JUDGE**

**17<sup>TH</sup> MARCH, 2015**

MR. GITHUKA: I seek leave to appeal.

COURT: Leave is granted.

**B.N. OLAO**

**JUDGE**

**17<sup>TH</sup> MARCH, 2015**