



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

**Civil Appeal 269 of 2007**

**DOMINICA WAMUYU KIHU.....APPELLANT**

**AND**

**JOHANA NDURA WAKARITU.....RESPONDENT**

*(An appeal against the judgment of the High Court of Kenya at Nyeri (Kasango, J.) delivered on 15<sup>th</sup> July 2007,*

in  
**HCCA NO. 1 OF 2000)**  
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**JUDGMENT OF THE COURT**

1. This is an appeal from the judgment of High Court (Kasango, J.) delivered on 15<sup>th</sup> June 2007 in **Nyeri High Court Civil Appeal No. 1 of 2000**.

2. The facts of the case are that in September 1989, the Respondent, **Dominica Wamuyu Kihu** (Dominica), filed a suit in the Principal Magistrate's Court at Nyeri against the Appellant, **Johana Ndura Wakaritu** (Johana) claiming that in 1958, her late father had registered the piece of land situate in Magutu area of Nyeri District and known as **Title No. Magutu/Gathehu/53** in the name of Johana in trust for her as she was a minor at that time. When she became of age, Johana refused to transfer the land to her despite demand. In the circumstances she prayed for an order directing the deregistration of Johana as the owner of the land and the registration of the same in her name.

3. On 13<sup>th</sup> August 1996, the Principal Magistrate's Court referred the dispute to Nyeri District Land Disputes Tribunal (The Tribunal) for hearing and final determination. After hearing the dispute, the Tribunal awarded the land to Dominica and directed that Johana be deregistered as the owner of the land and Dominica be registered in his place.

4. Aggrieved by that award, Johana appealed against it to the Nyeri Provincial Land Disputes Appeal Committee (the Committee) which after hearing the appeal upheld the decision of the Tribunal. Still

aggrieved by the Appeals Committee's decision, Johana further appealed to the High Court. Justice Kasango heard the appeal and held that both the Tribunal and the Appeals Committee had no jurisdiction to entertain the matter. This appeal is from that decision.

5. Before us, the Appellant appeared in person. After this Court had read to her the contents of her memorandum of appeal, the decisions of the Tribunal, the Appeals Committee and the High Court to refresh her memory, she told us that she adopts in their entirety the contents of her memorandum of appeal and added that the Respondent's father and her father were step brothers. So the Respondent is her cousin. He occupies one acre of the suit land while the Respondent and his family occupy the remaining 3½ acres. Although the Respondent has offered her the one acre she is occupying in an effort to settle the protest she has lodged in the Succession Cause relating to the Respondent's father's Succession Cause, she has rejected that offer. She wants the Respondent to surrender the whole land as it belongs to her.

6. Miss Lucy Mwai appeared for Johana. In response to the appeal, she submitted that the **Land Disputes Tribunal Act** (the Act) did not provide for an appeal to this Court from the decision of the High Court in matters prosecuted under that Act. According to her, appeals from the Appeals Committee to the High Court being only on points of law, the High Court decisions are final and there is no right of a further appeal to this Court. She therefore urged us to find that this appeal is incompetent and strike it out without any further ado. If we over rule her on that, she argued that as is clear from **Sections 3** of the Act, the Tribunal had no jurisdiction to entertain the dispute. So the learned High Court Judge was right in setting aside the decisions of both the Tribunal and the Appeals Committee. She therefore urged us to dismiss this appeal with costs.

7. We have considered the matter. As is clear from the parties' rival positions as summarized above, two main issues arise for our determination. They are whether or not there is a right of appeal to this Court from the High Court decision on proceedings conducted under the Act and whether or not the Tribunal and or the Appeals Committee had jurisdiction to entertain the dispute which has been raging between the parties and has been prosecuted from the Principal Magistrate's Court at Nyeri through to the Tribunal, the Appeals Committee, the High Court and finally to this Court.

8. On the first issue of the competency of this appeal, we have perused **Section 8** of the **Land Disputes Tribunal Act** which provides for appeals from decisions of the Tribunal and the Appeals Committee. It does not provide for appeals to this Court from the decisions of the High Court in such matters.

9. Appellate courts are creatures of the statutes establishing them. **Article 164(3)** of the **Constitution** establishes the Court of Appeal with jurisdiction to hear appeals from the judgments of the High Court **"and any other courts or tribunal as prescribed by an Act of Parliament."**

**Section 3(1)** of the **Appellate Jurisdiction Act** states that:-

***"The Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court in cases in which an appeal lies to the Court of Appeal under any law. (Emphasis supplied)"***

10. It is clear from these provisions, especially the latter, that, the jurisdiction of the Court of Appeal to hear appeals from the other courts and tribunals save for the appeals from the High Court, has to be expressly stated in any written law. As the Land Disputes Tribunal Act does not provide for appeals to the Court of Appeal, we find that no appeal lies to the Court of Appeal from judgments of the High Court under that Act. In the circumstances we find that this appeal is incompetent.

11. That would have brought this matter to an end. However, since arguments were presented fully on the whole appeal, we now proceed to deal with the other issue raised in the event we are wrong on the issue of the competence of the appeal.

12. On jurisdiction, **Section 3(1)** of the **Land Disputes Tribunal Act** is quite clear as to the matters the Tribunals under the Act were authorized to adjudicate upon. Their jurisdiction was limited to adjudicating on civil disputes relating to:-

**“(a) the division of, or determination of boundaries to land, including land held in common;**

**(b) a claim to occupy or work land; or**

**(c) trespass to land....”**

13. This provision clearly puts disputes relating to ownership or title to land beyond the Tribunals’ Jurisdiction. In this case the dispute is on ownership of **Title No. Magutu/Gathehu/53**. That was a dispute outside the jurisdiction of the Tribunal. The High Court Judge was therefore right in holding that both the Tribunal and the Appeals Committee had no jurisdiction to entertain the dispute.

14. For these reasons, we dismiss this appeal with costs. This does not mean that Dominica has lost her claim, if any, to the suit land. She is at liberty to pursue it as she is already doing in Succession Cause No. 374 of 2008 or if she so wishes, in another court with jurisdiction.

***Dated and delivered at Nyeri this 5<sup>th</sup> day of July 2012.***

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

**R. N. NAMBUYE**

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**JUDGE OF APPEAL**

**D. K. MARAGA**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**