



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL APPEAL NO. 61 OF 2012

BETWEEN

PAUL SIKUKU OKWARO.....APPELLANT

AND

RESPER ONGUNYA ADIKINYI.....RESPONDENT

(Being an Appeal from the ruling and Decree of the Chief Magistrate's Court at Busia in Civil Case No.69 of 2010 by Hon. I.T Maisiba- Senior Resident Magistrate).

JUDGMENT

PAUL SIKUKU OKWARO, the appellant herein, aggrieved by the ruling of the learned Hon. I.T. Maisiba which was delivered on 17th October 2012 and moved to this court on appeal. The order stated as follows:

- (a) That the application be and is hereby allowed with costs to the applicant.
- (b) That the Executive Officer to sign all the relevant documents to facilitate the applicant to obtain registration of title to land parcel **L.R BUKHAYO/MALANGA/ 1227** measuring 3.7 **Ha**.

The appellant was represented by m/s Onyinkwa & Company Advocates who raised five grounds of appeal which I have summarized as follows:

1. The learned trial magistrate erred in law and made orders of transfer of title to land parcel **L.R BUKHAYO/MALANGA/ 1227** contrary to the determination of the Land Disputes Tribunal.
2. That the ruling of the learned trial magistrate was ultra vires and should be set aside.

The respondent opposed the application on grounds that the learned trial magistrate correctly interpreted the award by the Land Disputes tribunal and that was the only way to give effect to the award.

When the matter came for directions, it was agreed by both counsel that the appeal would be canvassed by filing and exchanging submissions. Both parties accordingly filed their submissions.

This is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of **SELLE vs. ASSOCIATED MOTOR BOAT CO. LTD. [1965] E.A. 123**, where it was held that the first appellate court has to reconsider and evaluate the evidence that was

tendered before the trial court, assess it and make its own conclusions in the matter.

This appeal flows from the interpretation of the award of the District Land disputes Tribunal. **RESPER ONGUNYA ADIKINYI** (the respondent herein) filed a dispute with Nambale District Land Tribunal. This was No.2 of 2010. Her complaint was that the appellant had interfered with the boundary between land parcels Nos. **L.R BUKHAYO/MALANGA/ 1227& 1228**. After deliberations the tribunal gave an award as follows:

By a majority vote the tribunal rules that the land registrar Busia District and the District Surveyor determine the size of BUKHAYO/MALANGA/ 1227 as per the mutation form attached and plant the boundary between BUKHAYO/MALANGA/ 1227& 1228.

This award was adopted as the order of the court on 16th October 2010 by Hon. E.H Keago.

I have perused the authorities cited by both counsel most of which are good jurisprudence generally to the extent of jurisdiction of the Land District Tribunals before the repeal of the law that created them. However, in my opinion these authorities do not apply to the present appeal. There are only two issues in this appeal; one whether the Nambale District Land Tribunal gave an order within its jurisdiction or not and two, whether the order complained of correctly interpreted the award of the tribunal.

My perusal of the complainant before the Tribunal, the evidence of both parties and the subsequent award is clear that the dispute was on the boundary. The direction by the tribunal for the surveyor to establish the size of land parcel number **BUKHAYO/MALANGA/ 1227** was for the sole purpose of establishing where the boundary between that parcel and land parcel number **BUKHAYO/MALANGA/ 1228** was. This was necessitated by the finding on the visit to the land by the tribunal on 5th July 2010. The record indicates that the tribunal found no distinct boundary between the two parcels of land.

I therefore make a finding that the tribunal's award was within its mandate. This was the award that was adopted by the court on 16th October 2010.

However, the subsequent order by Hon. I.T Maisiba, learned magistrate was a complete misinterpretation of the Tribunal's award. There was no issue of transfer of land. Had the Tribunal made such an award, it would have amounted to an illegality.

The upshot of the foregoing analysis of the evidence on record, I find that the ruling of the learned Hon. I.T. Maisiba which was delivered on 17th October 2012 cannot stand. The same is quashed and all orders that emanated from it are set aside. Costs to the appellant.

DELIVERED and SIGNED at BUSIA this 20th day of December, 2017

KIARIE WAWERU KIARIE

JUDGE