



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CIVIL APPEAL NO.86 OF 2002**

**BETWEEN**

**CHARLES KINABULENGO KISANGULA .....APPELLANT**

**AND**

**JOEL LIHONDO KEGOLI .....1<sup>ST</sup> RESPONDENT**

**TOM KEGOLI .....2<sup>ND</sup> RESPONDENT**

**JOSEPH E. KEGOLI .....3<sup>RD</sup> RESPONDENT**

**(Being an appeal from the ruling/order of the Hon. Mrs. R. Oganyo, RM in Kakamega CM Civil  
Mis. Application No.23 of 1999 delivered on 28/08/2002)**

**J U D G M E N T**

**Introduction**

1. By the Notice of Motion dated 11/11/2001 brought pursuant to Section 7 of Act No.18 of 1990 (The Land Disputes Tribunals Act) and Sections 3A, 80 and 98 of the Civil Procedure Act and all other enabling provisions of the law the appellant prayed for orders:-

- 1) That the orders made on 22/09/1999 and 29.03.2000 be reviewed and set aside.
- 2) That the applications dated 17.06.1999 and 16.02.2000 filed same day by applicant herein be marked as withdrawn.
- 3) That this Court do enter judgment in accordance with the decision of the Likuyani Division Lugari District Land Disputes Tribunal Case No.11 of 1998 filed formally herein on 16.06.1999.
- 4) That the Executive Officer herein be empowered to sign all relevant documents in case the respondents default to give effect to the decision aforesaid.

2. The appellant stated 4 grounds in support of the application and also swore an affidavit on 10/11/2001. From the said affidavit the following facts emerge: the appellant was the claimant in Dispute No.11 of 1998 before the Land Disputes Tribunal Likuyani Division. The decision of that dispute was forwarded to the Court below on 11.02.1999 though it was not formally filed until 16.06.1999. Thereafter the appellant filed an application dated 17.06.1999 seeking adoption of the Board's decision as an order of the Court. In the meantime the appellant had filed an appeal with the Western Provincial Disputes Appeals

Committee. On 02.12.1999 the aforesaid Committee delivered its decision in the appellant's favour, namely the Appeals Committee upheld the Tribunals decision. It was after the said decision that the appellant moved the Court below vide an application dated 16.02.2001 for adoption of the decision. On 29.03.2000 the Court stayed proceedings for adoption pending a determination of a Judicial Review application to the High Court. That Judicial Review application was struck out on 28.09.2001 hence the appellant's application dated 11/11/2001.

3. The application for adoption was strongly opposed through the replying affidavit sworn by the 2<sup>nd</sup> appellant on 03.01.2002 and was also based on the grounds of opposition filed on behalf of the respondents.

### **The Trial Court's Ruling**

4. After carefully considering the application and the submissions by Counsel, the learned trial Magistrate found and held that the proceedings of the Land Disputes Tribunal which were incomplete were not capable of adoption as a judgment of the Court. The application was accordingly dismissed with costs to the respondents.

### **The Appeal**

5. Being aggrieved by the said outcome of his application, the applicant filed this appeal. He set out 8 grounds of appeal, faulting the learned trial Magistrate for refusing to enter judgment in accordance with the decision of the Likuyani Division (Lugari District) Land Disputes Tribunal and or Provincial Appeals Committee. The appellant also faulted the learned trial Magistrate for allegedly failing to consider the appellants grounds in support of the application. The appellant proposes that this appeal be allowed, the orders of the lower Court be set aside and an order in terms of the prayers in the application be made with costs to him.

6. This being a first appeal, this Court is under a duty to carefully reconsider and evaluate the proceedings and the trial Court's ruling afresh with the view of reaching its own conclusions in the matter until and unless this is done, this Court as the first appellate Court would have no basis for either agreeing or disagreeing with the findings of the learned trial Magistrate. It is however to be noted that in carrying out this function this Court has to act with caution, so that where there is no evidence that the trial Court either acted on wrong principles or that the Court was plainly wrong then there would be no justification for interfering with the trial Court's findings. See **Peters –vs- Sunday Post Ltd [1957] EA 424.**

### **Submissions**

7. Parties herein agreed to canvass the appeal by way of written submissions, but inspite of extension of timelines for the appellant's Counsel to file submissions on behalf of the appellant no submissions were filed. The respondents filed their submissions way back on 25/11/2008 together with supporting authorities. In essence therefore this appeal proceeded to hearing exparte.

### **Analysis and Determination**

8. After carefully considering the Record of Appeal and the submissions by the respondents, the issue that arises for determination is whether the findings of the learned trial Magistrate were well founded or whether the learned trial Magistrate misapprehended the law and thereby reached wrong conclusions. Upon reading the Record of Appeal, the law and the respondent's submissions, it is clear to me that the learned trial Magistrate was perfectly right in making the impugned findings. First and foremost the Land Disputes Tribunal had no jurisdiction to deal with the matter that was before it. As provided under Section 3(1) of the Land Disputes Tribunals Act No.18 of 1990 (since repealed) Tribunals under the Act were empowered to determine civil disputes involving:

- a) The division of or the determination of boundaries to land.

b) A claim to occupy or work land.

c) Trespass to land.

9. The record shows that the dispute before the Tribunal was, ultra vires the above provisions. Secondly the learned trial Magistrate found and I have also noted the same, that the decision of the Tribunal did not comply with the provisions of Section 3(8) of Act No.18 of 1990. The award was not dated as required by law. Further the said decision did not comply with the mandatory provisions of Section 7(1) of the Act which required the Chairman of the Tribunal to cause the decision of the Tribunal to be filed in the Magistrate's Court together with any depositions or documents taken or proved before the Tribunal. From the record, the Chairman of the Tribunal did not comply with these provisions as there were neither witness statements nor documents relied upon by the parties during the hearing of the dispute.

10. I have read the ruling of the learned trial Magistrate with care. I have also read the forceful submissions and objections made against the appellant's application for adoption and I am satisfied that the learned trial Magistrate was properly guided on both facts and law.

11. I note that the appellant has not contested the respondent's submissions apart from filing the Memorandum of Appeal.

### **Conclusion**

12. In conclusion, I find and hold that this appeal lacks merit and the same is hereby dismissed in its entirety. Costs of the appeal shall be borne by the appellant.

13. Orders accordingly.

Judgment delivered, dated and signed in open Court at Kakamega this 15<sup>th</sup> day of June 2016.

**RUTH N. SITATI**

**J U D G E**

In the presence of:

Mr. Munishi (absent) for Appellant

Miss Simiyu for Respondents

Mr. Okoit - Court Assistant