



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL APPEAL NO.64 OF 2007

DANIEL LIYOI GIDEON.....PLAINTIFF

VERSUS

ROY JENDEKA MUDULIA.....RESPONDENT

JUDGEMENT

(1). The appellant in this case appeals against the decision of the Western Provincial Land Disputes Appeals Committee handed down on 13th of December 2006. This decision confirmed the Orders of Tongaren Division Land Disputes Tribunal that ordered the subdivision of Bungoma / Kamakolwa / 2045 whereby the Claimant in that Case one Roy Jendeka Mudulia was awarded 2 acres from the said land while Wilson Kaiga was awarded 7 acres.

(2). The Appeals tribunal therefore dismissed the appeal of Daniel Lwoi. After the appeal was dismissed a decree was prepared, and was issued by the Senior Resident Magistrate Bungoma on 8th December 2008 and issued on 10th December 2008 adopting the Tongaren Land Disputes tribunal as judgement of the Court.

(3). It is that adoption that arose out of the dismissal of the appeal to the Provincial Appeals Tribunal that the appellant now appeals against.

(4). The appellant sets 8 grounds of Appeal. Out of those grounds, I find grounds number 2 3 & 4 pertinent. The grounds are set out thus

1. That the said Land Disputes Appeals Committee erred in Law in failing to find that the Tongaren Division Land Disputes Tribunal lacked jurisdiction to entertain the matter since the land in dispute is a registered land parcel under the Land Registered Act Cap 300 Laws of Kenya duly registered as Land Parcel Number Bungoma/Kamakolwa/2045 belonging to the Appellant who is in possession of a land Title Deed.

2. That the Provincial Appeals Committee erred in law in failing to find that the Tongaren Division Land Disputes Tribunal lacked jurisdiction to entertain the matter which was purely a succession matter and therefore a preserve of the High Court.

3. That the Provincial Land Disputes Appeals Committee erred in Law in upholding an award by the Divisional Land Disputes Tribunal which was a nullity in law as the Divisional Land Disputes Tribunal lacked jurisdiction to entertain the matter.

4. That the Provincial Land Disputes Appeal Committee erred in law in failing to find that the

Divisional Land Disputes Tribunal lacked jurisdiction to confer title to the Applicant/Respondent under section 3 of the Land Disputes Tribunals Act number 18 of 1990.

5. That the Provincial Land Disputes Appeals Committee applied wrong principles in law in reaching their decision.

6. That the Provincial Land Disputes Appeals Committee erred in law in failing to give reason on how they reached their decision.

7. That the Provincial Land Disputes Award which was undated was fatally and incurably defective and the same ought to be set aside.

8. That the entire award and/or judgement was against the weight of the evidence adduced.

(5). In his written submissions, the Counsel for the respondent in opposing the appeal argued that the appeal contravenes section 8(a) of the then Land Appeals Disputes Tribunal Act No.19/1990 which says the appeal must be certified that an issue of law (other than customary law) is involved. That that provision was not complied with and thus, there is no appeal for determination. He further argued that the tribunal dealt with issues of fact under section 8(8) of the said Act and that therefore no appeal lies to this court.

(6). The appellant on his part argues that the Tongaren Land Disputes Tribunal lacked jurisdiction to entertain land which was registered under the then Registered Land Act Cap.300. He argued that it is only the High Court and the Resident Magistrate's Court that had jurisdiction to hear matters relating to registered land under section 159 of the RLA. Further it was argued by the appellant that the Tongaren Division Land Disputes Tribunal had no jurisdiction under section 3(1) of the land Tribunal Act to entertain title to land. That finally the Appeals tribunal failed to find that the Tongaren disputes Tribunal's finding were fatally and incurably defective.

(7). The issue for determination are

(1). does an appeal lie to this Court?

(2). was there a valid decision from the Tongaren Land Disputes Tribunal capable of being confirmed by the appeals tribunal and subsequently capable of being made an order of the Court?

(8) The Land disputes Tribunal Act No.19 of 1990 sets out the circumstances under which an appeal can come to the high Court. The same is well set out in Section 8(9) which states as follows:-

“Either party to the appeal may appeal from the decision of the Appeals Committee to the High court on a point of law within sixty days from the date of the decision complained of provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of Law (other than customary law) is involved”.

The issue here in, was there a point of law involved? The issue as to whether the Tongaren Land Disputes Tribunal had jurisdiction to determine title to land is a matter of law not fact. That is the issue under interrogation here and the subject of this appeal. A Court or tribunal that has no jurisdiction acts in vain. Whatever it may do or order would have no force and/or backing of law¹

I find that the appellant was well within the law to bring this appeal.

(9) The Tongaren Land Disputes Tribunal attempted to deal with title to land. It ordered that the suit land be shared between two persons and apportioned the acreage of each. This was therefore an attempt to deal with title to land. It has been held time and again that the land dispute tribunals have no power under the Act to deal with title to land²

1. – Owners of the motor vessel “Lillian S” Vs Caltex Oil (Kenya) Ltd [1989] KLR 1

2. – Franca Allers Sogno in Misc. Civil Application No.181 of 1999 and Msambweni Land Disputes tribunal & Another Vs. Bakari Ali Mwakomanya Exparte Diana Muthoni Muturi Misc. Civil Application No.56 of 2012

I find that in deciding to deal with title to land, the Tongaren Land Disputes Tribunal acted without jurisdiction. Their orders therein were a nullity. There was no order that was capable of being confirmed by the Western Provincial appeals tribunal at all. The subsequent adoption of that award as the order of the Court was invalid and I hereby set it aside.

The appeal succeeds and is allowed with costs.

Dated at BUNGOAM this 15th day of June, 2015

S. MUKUNYA

JUDGE