

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

CIVIL CAUSE NO: 94 OF 2010

PERITA MAHERO.....APPELLANT

VERSUS

MARY OMBACHI ANDANDA.....RESPONDENT

JUDGEMENT

This is an appeal from the provincial land Disputes Appeals Tribunal, Western Province.

The two grounds of appeal are that the appellant was not granted a hearing and that the Committee was not only wrongly constituted but also arrived at an unlawful decision.

Parties agreed to determine the appeal by way of written submissions. Mr. Mukavale, counsel for the appellant contends that the appellant was not heard. A grand daughter was heard on behalf of the appellant who was the respondents before the appeals committee. Counsel further contends that the appeal was properly filed in time. On his part, Mr. Shilenje, Counsel for the respondent submitted that the appellant was granted an opportunity to be heard but she elected to respond through her granddaughter. Counsel further contends that the appeal was filed out of time and without leave of the court.

The record of appeal shows that the dispute is in relation to plot No. **BUTSOTSO/INDANGALASIA/435**. The dispute was heard before the Lurambi Land Disputes Tribunal as claim number 86 of 2007 whereby the appellant was the claimant and the respondent the defendant. The Lurambi Land Dispute Tribunal gave the appellant three acres, Robert Ombachi, the husband to the respondent two acres and Philip Mukolwe, a purchaser, one acre. The decision of the Lurambi Land Disputes Tribunal was overturned by the Appeals Committee and the entire land was given to the respondent.

The proceedings show that the land in dispute belonged to AKUTUYA MBACHI who is a blood brother to the appellant, Perita Mhero Akutuya is deceased and had not child. It seems there was succession cause number 543 of 1999 at the Kakamega High Court but no proceedings or grant were produced. The respondent is the wife of Robert Mbachi who is also deceased. It appears to me that Akutuya and Robert were related too.

The Lurambi Land Disputes Tribunal visited the land and heard evidence from neighbours. The respondent informed the appeals committee that she has used the land for long. She wanted four acres as per her evidence but was given the entire land. The respondent had proposed to give the appellant two acres while she retains four acres.

From the record, it is clear that parties were litigating over land that belonged to a deceased person. It is not clear from the proceedings that the parties were claiming a right to occupy or work on the land in dispute. That being the case, I do find that both Tribunals lacked jurisdiction to entertain the dispute. The matter ought to have been dealt with by the High court through succession or normal civil suit.

It is clear that all the parties utilize the land. I do find that the decision of both Tribunals was made without jurisdiction. I do grant all the parties to occupy and work on the land. The appellant to use 2 ½ acres and the respondent to utilize 2 ½ acres. One acre to be utilized by Philip Mukolwe. Parties are at liberty to pursue their respective rights through the succession cause or by filing a fresh suit. The decisions of the Lurambi Land Dispute Tribunal in claim No. 86 of 2009 and that of the Appeals

Committee, Appeal number 5/2009 are hereby set aside. Each Party shall meet her own costs.

Dated, signed and Delivered at Kakamega this 26th day of February 2014.

SAID J. CHITEMBWE

JUDGE