



REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL NO: 70 OF 2011

STEPHEN WEKESA MATA

SILAS WANYONYI NYONGESA.....APPELLANTS

ROBERT MURUNI OPICHO

VERSUS

PAUSTINA NAMALWA SIMIYU.....RESPONDENT

JUDGEMENT

This is an appeal from the Western Provincial Committee in land Dispute case number 33 of 2003. Parties agreed to determine the appeal by way of written submissions.

Mr. Akwala, Counsel for the appellant submit that the Appeal was presided over by Six members of the committee and this renders the decision as a nullity, the respondent filed the claim in her capacity as the widow of the deceased owner of the land yet she had no letters of administration, further the title number **KAKAMEGA/KONGONI/197** was non-existent as it had already been sub-divided, that the matter was time barred and finally that the Tribunal lacked jurisdiction as the claim was based on fraud.

Mr. Kiveu, counsel for the respondent supports the decision of the land Disputes Tribunal and the Appeals Committee. Counsel contends that the appellants obtained their titles irregularly as they are not related to the respondent's late husband. The claim involved land and was filed within time and that the respondent proved her case.

The proceedings started before the Lukuyani Land Disputes Tribunal. The respondent claimed that her late husband owned plot number **KAKAMEGA/KONGONI/197** measuring 25 acres. She claimed that 12 acres were sold and the appellants took part of the land. The Tribunal held in her favour. An appeal was filed before the Appeal Committee and it was dismissed hence leading to the filing of this appeal.

I have gone through the proceedings before the Lukuyani land Disputes Tribunal. It is clear that the deceased, Jackson Simiyu made several complainants concerning the occupation of the suit land by the appellants. I have seen the extracts of the land register on the original plot number 197. This was Settlement Scheme Land that was allocated to Jackson Simiyu. Plot number 197 was closed on 27/10/1993 and plot number 1022- 1026 were created. The deceased was registered as the owner of plot number 1022 measuring 4.4 hectares while the 1st appellant Stephen Wekesa was registered as the

proprietor of plot number 1023 measuring 2.033 Ha. Silas Nyongesa got registered for plot 1025 measuring 1.03 ha while the 3rd appellant, Robert Miruni got plot 1026 measuring 1.03 hectare. The plot was later registered in the names of James Alwenyi.

The record shows that the land was transferred during the lifetime of the deceased. It is also clear that the deceased was against the transfers. From the extract of the green card, it is not indicated whether the charge of ownership from the deceased to the appellants was by way of transfer it was a gift as stated in the proceedings aforesaid. Counsel for the appellants contends that the number of members of the Appeals Committee heard the appeal was six. I do not find that the number of members of a Tribunal can render its decision a nullity.

It is clear that the claim was based on fraud pursuing her husbands' protestation on the transfer of the land to the appellant. That being the case, I do find that the Tribunal lacked jurisdiction to entertain the claim that was based on fraud. The respondent ought to have obtained letters of administration to file her case.

For purposes of being fair to both parties, I do find that the appeal is merited and is allowed. The appellants seem to be in occupation of the suit land. The respondent is hereby granted leave to file suit against the appellants before the Land and Environment court challenging the title obtained by the appellants. The matter was investigated by the police but part of the record of the Lukuyani Land Disputes Tribunal was not included in the record of appeal.

In the end the appeal is allowed. Each party to meet his/her own costs. The respondent is at liberty to file a fresh suit. It is so ordered.

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

S.J CHITEMBWE

JUDGE