

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 1 OF 2010

NAOMI INAMANI BUTI 1ST APPELLANT

JULIUS LIJODI 2ND APPELLANT

AUTHER MUSEE BETI 3RD APPELLANT

HARUN BETI 4TH APPELLANT

V E R S U S

LEAH ISIAHO LIRUCHILO RESPONDENT

(Appeal arising from the ruling of the Western Provincial Land Appeals Committee in (Appeal No. 11 of 2005).

J U D G M E N T

This is an appeal from the Western Provincial Appeals Committee's ruling. The grounds of appeal are that the dispute was outside the Provisions of the Land Disputes tribunal Act No. 18 of 1990, that the tribunal had no jurisdiction to determine the dispute, the dispute was time barred and the proceedings were a nullity. The appellant also contends that the composition of the committee was illegal as more members sat in the dispute than is allowed.

Counsels for both parties agreed to determine the dispute by way of written submissions. The appellant contends that the land in dispute is plot number **ISUKHA/SHIRERE/922** that was originally registered in the names of **DANIEL BETI ALUKOYE** who is deceased. Daniel Beti is the husband of the first appellant and the father of the other three appellants. Counsel maintains that the dispute fell outside the provisions of **section 3(1)** of the Land Disputes Act. The dispute touched on the ownership of the title and the tribunals had no jurisdiction. On her part counsel for the respondent contends that the appeal was filed out of time and is incompetent. The decision of the Appeals Committee was read to the parties on the 30.10.2009 and the appeal was filed on 6.1.2010 after expiry of 60 days. Counsel further maintains that the claim was for occupation of land and therefor within the tribunal's mandate. The membership of the committee was also lawful.

I have gone through the proceedings before both tribunals. Five members resolved the dispute before the appeals committee. I do not find that the composition of the appeals committee prejudiced the appellants' case and that ground of appeal fails. With regard to the issue of the time of filing the appeal the ruling of the members was signed on 30.10.2009. There are no proceedings to show that the parties were there when the ruling was signed. It is also not clear whether the date of the signing was also the date of delivery of the ruling. Even assuming that the ruling was delivered on that date, the computation of time given by the law should also take into account all other factors. There were holidays in December. The December vacation is also to be considered. There is also the other considered view that a decision of the appeals committee has to be adopted by the court for it to take effect. There are conflicting views as to whether the decision in the appeals committee takes effect after delivery or after it has been adopted by the court. In this case an application dated 12.1.2010 was filed by the respondent seeking to have the decision of the Western Provincial Appeals Committee be adopted as a judgment of the court. My view is that without it being adopted the winner cannot execute that judgment. The tribunal lacks the mechanism to have its orders effected. That is why it has to be adopted as a judgment of the court for it

to take effect. Therefore before it has been adopted then the judgment merely existing but cannot confer any right to the winner. Although the law provides for a 60 day period for the loser to appeal, I do find that any appeal that is filed before the verdict of the tribunal is adopted is valid and should be considered. The overriding objective is to give substantive justice to the parties and not to resolve disputes on technicalities. This appeal was filed on the 6.1.2010 which I find to be within the 60 days period provided by the law. There is no provision that those 60 days' period must include holidays when the courts are not working. I therefore find that the appeal was filed on time.

The next issue is whether the tribunal lacked jurisdiction to determine the dispute. I have read the proceedings before the Municipality Land Disputes Tribunal (Claim No. 12 of 2004) and noted that the claim was not clear. The respondent alleged that she is the only daughter of her late father **LUKA MALUMBANI**. Her father adopted **DANIEL BETI**. The respondent complained that the land in dispute belonged to her late father and her father had adopted Daniel Beti who was a son of his brother **LUKOYE**. Daniel Beti received dowry when she got married but did not perform the usual marriage traditions and that was a humiliation to the respondent. She now decided to claim her father's land. The claim was filed in 2004 while the land had already been registered in the names of Daniel Beti way back in the 1970s. There was no decision by the tribunals that the respondent be given a portion of the land. The tribunal held that the respondent be paid KShs.51,000/= plus interest of 10% per annum. According to the appellants they were forced by the area chief to enter into an agreement with the respondent to pay that amount to the respondent as compensation. Therefore even if the respondent were to execute she can only claim the amount awarded and not occupation of the land. The issue is whether the tribunal could order payment of that amount. My answer is that it didn't. The respondent was in essence enforcing contractual obligations that falls outside the mandate of the tribunal as per **section 3(1)** of the now repealed Land Disputes Tribunal Act. The mandate of the tribunals was limited to the division, determination of boundaries, claim to occupy or work on land and trespass to land. It did not include awarding compensation and penalizing the losers.

In the end I do find that the appeal is merited and the same is allowed. The tribunals lacked jurisdiction to hear and determine that dispute. The land was already registered in the names of an owner who was not a party to that dispute. I believe by then Daniel Beti had already died in 1996 and he could not have been penalized for having failed to conduct traditional marriage rituals for the respondent. The claim was farfetched and an abuse of the tribunals mandate. The decisions of both tribunals are hereby set aside as the proceedings were a nullity. Each party shall meet his/her own costs.

Delivered, dated and signed at Kakamega this 18th day of September 2014

SAID J. CHITEMBWE

J U D G E