



REPUBLIC OF KENYA

High Court at Kakamega

Civil Appeal 160 of 2011

LEONIDA AWINO ACHELA APPELLANT

V E R S U S

ERICK KHAYUMBI MUSOGA RESPONDENT

(Appeal arising from the decision of the Western Provincial Land Disputes Appeals Committee dated 17th October 2011 in Appeal No. 80 of 2010)

J U D G M E N T

This is an appeal from the decision of the Western Provincial Appeals Land Disputes Committee in Appeal no. 80 of 2010. The grounds of appeal are that the Appeals Committee was illegally constituted, the committee did not re-evaluate the evidence of the Lurambi Land Disputes Tribunal, the Appeals Committee failed to give reasons for its decision, both Tribunals lacked jurisdiction and that the respondent lacked jurisdiction to institute the claim.

Mrs. Muleshe, counsel for the appellant, submitted that the committee that heard the appeal was composed of five members instead of three as required. The Lurambi Land Disputes Tribunal distributed the land to both parties and the Appeal Committee did not re-evaluate the evidence and its judgment did not give any reason. The land was registered and the decision of the Lurambi Tribunal was that it be shared to both parties, that were outside its jurisdiction. The submissions by counsel are in line with her written submissions dated 20th November 2012.

The respondent filed written submissions dated 12th November 2012. The respondent contends that the ground that the Appeals Committee was wrongly constituted is baseless. The appeal is based on matters of facts and not issues of law and therefore should be dismissed. According to the respondent, both Tribunals had jurisdiction to hear and determine the dispute as provided by **Section 3** of the Land Disputes Act number 18 of 1990. It is the respondent's submissions that he had the locus standi to file the claim. He is the son of the late **Ernest Musora** who was the registered owner of plot number **BUTSOTSO/SHIBEYE/2120** before it was transferred to the appellant. His father had bought the land from on **Alphonse Mangla**.

The respondent's claim before the Lurambi Land Disputes Tribunal was that his father bought plot number **BUTSOTSO/SHIBEYE/2120** measuring $\frac{3}{4}$ acre from Alphonse Mangala in 1995 for **KShs.40,000/=**. The respondent lived on the land with his father who was cohabiting with the appellant. Later the land was transferred to the appellant. The respondent contends that his father had told him to settle on the suit land. His evidence before the tribunal was that the registration of the appellant was done after the death of the respondent's father

On her part, the respondent testified that the respondent's father was her manfriend. She had been

chased away by her husband and she had five. Her father and brother contributed the purchase price of KShs.40,000/= and bought her the land. Her parents built her a house on the land and invited the respondent's father to live with her on the land. Since she was a woman, she allowed the respondent's father to be registered as the proprietor in 1997 when they started cohabiting but the property was later transferred into her name in 2007 while the deceased was alive.

The constitution of the Appeals Committee should not be an issue. Their decision was unanimous and it is not established that the mere constitution of the panel caused a miscarriage of justice. The Appeals Committee was composed of laymen and it is not expected of them to write a detailed and well-reasoned decision. The ground that the Appeals Committee did not re-evaluate the evidence cannot determine this appeal.

With regard to the issue of jurisdiction, **section 3** of the then Land Disputes Tribunal Act number 18 of 1990 limited the jurisdiction of the Tribunals to :-

“3. (1) Subject to this Act, all cases of a civil nature involving a dispute as to-

- a) the division of or the determination boundaries to a land, including land held in common**
- b) a claim to occupy or work land; or**
- c) trespass to land,**

shall be heard and determined by a Tribunal established under section 4.”

The land in dispute is now registered in the names of the appellant. The respondent's claim was that the land belonged to his late father. He did not show that he was the administrator of his father's estate. Further, the transfer of the land was done by his father while he was alive. The Lurambi Land Disputes Tribunal resolved that the appellant be given ½ acre while the respondent takes ¼ acre. That was beyond its jurisdiction. The effect of the decision is to defeat the appellant's title to the land. This was not a claim to work on or occupy land but it was a claim for ownership of the land. The respondent's deceased father had other properties as per the respondent's evidence before the Lurambi Tribunal. Further, he is the second born child and the deceased had other children. His father died in 2008 and the transfer was made on 18th April 2007. His father indicated that it was a gift to the appellant when transferring the land.

I do find that the two Tribunals lacked jurisdiction to hear and determine the respondent's claim which falls outside the provisions of **Section 3** of the then Land Disputes Tribunal Act No. 18 of 1990. The respondent lacked the locus standi to initiate the claim as he is not the administrator of his deceased father's estate.

In the end, I do find that the appeal is merited and the same is allowed. The two decisions of the Lurambi Land Disputes Tribunal and the Western Provincial Appeals Committee are hereby set aside. The appellant shall have the costs of this appeal.

Delivered dated and signed at Kakamega this 7th day of February, 2013

SAID J. CHITEMBWE
J U D G E