



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Civil Appeal 87 of 2007**

**MARY MUKHWANI MAKOKHA ..... APPELLANT**

**V E R S U S**

**MOSES LUKOA KWANUSU ..... RESPONDENT**

**J U D G M E N T**

This is an appeal from the Western Provincial Land Disputes Appeals Tribunal relating to case number 35 of 2008. The appellant's grounds of appeal are that, the respondent's claim had been instituted out of time, that the Tribunal distributed the suit land plot number **NORTH KABRAS/LUANDETI/2277** yet the plot forms part of a deceased's estate, that the appeals committee erroneously overturned the decision of the Lugari Land Disputes Tribunal, that the effect of the ruling of the tribunal is to entertain a claim for specific performance and that the decision of the Tribunal was ultra vires.

Both parties agreed to proceed by way of written submissions. The appellant submits that the respondent relied on a sale agreement before the appeals tribunal yet the appellant was not a party to that agreement. The land belonged to the appellant's late husband and no succession has been done and that the tribunal awarded the respondent half an acre of land which in essence was enforcing a claim for specific performance. The respondent is agreeable to the decision of the appeals committee. He submits that his claim was for the division of land and the tribunal ordered that the land be divided and he gets half an acre. The appellant agreed before the tribunal that her husband had sold a portion of land to the respondent and the only issue was payment of balance of KShs.3,951/=.

The main issue for determination is whether the Western Provincial Appeals Tribunal reached at the correct verdict. The matter started before the Lugari Land Disputes Tribunal as case number 5 of 2007. That tribunal dismissed the respondent's claim with costs. The respondent appealed and the Western Provincial appeals Tribunal's verdict is that the respondent was awarded half an acre of the suit land which he bought at an agreed price of KShs.60,000/= . The appeals tribunal revoked the decision of the Lugari Land Disputes Tribunal and directed the respondent to meet the costs of the sub-division of the suit land.

From the proceedings herein, it is clear that the registered owner of the suit land, **JULIUS MUKHWANI SIAKA** is deceased. He was the husband to the appellant. The respondent's claim before the tribunals were that he bought half an acre of land from the suit property for KShs.60,000/= and he has been living on the land since 2002. That having been the case I do find that the respondent's claim was based on contract. He wanted to enforce the contract so that he could obtain title for the portion of land he bought from the deceased. It is not clear when the appellant's husband died. Since the appellant was not a party to the agreement it was wrong for the appeals committee to make an order that would in effect mean that a transfer in favour of the respondent be made yet the registered owner is deceased. The only avenue for the respondent would be to file a citation against the appellant so that the deceased's estate which could comprise of other properties is distributed to the beneficiaries as well as liabilities, if any. I therefore do find that the respondent's claim was not based on the division of land as claimed by the respondent. If the land is divided, then the next issue will be how will the respondent obtain his title deed. There is need for the respondent's claim to be heard by a court with competent jurisdiction so that his claim can be verified. The appellant is not the administrator of the deceased's estate.

In the end I do find that the appeal is merited and the same is allowed. The decision of the Appeals committee as well as that of the Lugari Land Disputes Tribunal are hereby set aside. Each party shall

meet his/her own costs for the Lugari Tribunal Dispute, the Appeals Committee and this appeal.

*Delivered, dated and signed at Kakamega this 7<sup>th</sup> day of February, 2013*

**SAID J. CHITEMBWE**  
**J U D G E**