



REPUBLIC OF KENYA

High Court at Kakamega

Civil Appeal 65 of 2010

(An appeal from Western Provincial Appeals Committee)

PIUS Y. NDOMBI APPELLANT/APPLICANT

VERSUS

HARUN OSUNDWA ONG'AMO RESPONDENT

JUDGMENT

Before me is an appeal dated and filed on 10th October 2011 by the appellant PIUS NDOMBI. It is an appeal against the decision of the Western Provincial Land Disputes Appeals Committee in Western Province Appeal No. 138 of 2007. The grounds of appeal are six (6) as follows –

- 1. The Appeals Committee erred in law in deliberating over issues of sale of land agreement contrary to the powers conferred to it by the Land Disputes Tribunal Act (No.18 of 1990).**
- 2. The Committee erred in fact by pronouncing a ruling and or observations that was ambiguous and biased.**
- 3. The Committee erred in fact by deliberating and or entertaining a dispute that was barred by limitation period.**
- 4. The Committee erred in law to (deal with) a dispute relating to ownership of land *ultra vires* the provisions of law governing it.**
- 5. The Committee erred in fact to entertain fresh issues in its appeal.**
- 6. The Committee erred in law to entertain an appeal filed out of time.**

Though some amended grounds of appeal were said to be filed on 6/9/2011, these were not formally made part of the record, and no leave of the court was sought and obtained for filing of the same.

Parties counsel M/S Phoebe Munihi Muleshe & Company for the appellant and M/S Kiveu advocate for the respondent filed written submissions and relied on the same. I have perused the said submissions.

This is an appeal from the decision of Western Provincial Land Disputes Appeals Committee.

There is no dispute that the land in question is registered under the Registered Land Act (Cap. 300). The main issue is whether the Appeals Committee had jurisdiction to make the orders it made, and whether

the orders made were capable of being understood.

A reading of the Appeals Committee's decision certainly shows confusion in the decision. The decision reads in part as follows –

“That in conclusion, the appeal tribunal court finds the decision of Lurambi Tribunal court to be in order and to have fairly concluded the parties’ boundary conflict case when surveyors are to come to the site for boundary corrections.

Verdict: In view of the observations, the court orders that:-

- 1. The appeal is successful.***
- 2.***
- 3. The Lurambi Tribunal Court’s order on costs is overturned.***
- 4.***
- 5.”***

It is observed here that the orders for surveyors to come to the site for boundary correction were infact the orders of the Land Disputes Tribunal Therefore, it cannot be said that the said orders which Harun Osundwa Angamo was saying on appeal to the Appeals Committee lacked merits are sustained, and yet the appeal is at the same time allowed. This was confusion. If the appeal from the decision of the Lurambi Land Disputes Tribunal was allowed, then the orders of the Tribunal for surveyors to do boundary corrections cannot stand. The decision of the Provincial Appeals Committee therefore, in my view, demonstrates confusion. It should not be left to stand.

The major issue is whether the Appeals Committee, and by extension the Land Disputes Tribunal had jurisdiction to entertain the land dispute and make the substantive orders on the same which they made.

The Land Disputes Tribunal’s Act (Cap 303A) confers limited jurisdiction on the Land Tribunals and by extension to the Appeals Committee, in land matters, under Section 3 (1) thereof. The said section states –

3 (i) Subject to this Act all disputes of a civil nature involving a dispute as to –

- a) The division of, or the determination of boundaries to 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.

Section 8 of the Act provides for appeals to the Provincial Land Disputes Appeals Committee. The Act also, under Section 12, amends the provisions of Section 159 of the Registered Land Act (Cap. 300), which henceforth (1990) reads –

“159. Civil suits and proceedings relating to the title to, or the possession of land, or the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge being an interest which is registered or registrable under this Act, or which is expressed by this Act to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds; by the Resident Magistrate’s court, or where the dispute comes within the provisions of Section 3 (1) of the Land Disputes Act in accordance with the Act.”

The above Provisions of the law, in my view mean that section 3 (1) of the Land Disputes Tribunal Act applies to land registered under the Registered Land Act. This matter revolves around a sale where one

person is claiming to have bought six (6) acres but that he was given five (5) acres. This is the appellant. He claims that a neighbour has taken the one (1) acre. Therefore, the issue is strictly not an issue relating to boundaries between neighbours or people using the land in common. It is not about occupation or use. It is not on trespass or division of land. It goes beyond that and involves ownership, that is who owns what portion of land. That in my view is beyond the jurisdiction of both the Lurambi Land Disputes Tribunal and the Western Provincial Appeals Committee.

In addition, the jurisdiction for fixing of boundaries for land registered under the Registered Land Act is clearly conferred upon the Registrar under Section 22 of the Registered Land Act. In my view, even if the Land Disputes Tribunal and the Appeals Committee had jurisdiction to entertain the matter, it would be preferable to let the Land Registrar attempt to sort out the matter of the boundary first, and if it failed, then the Tribunal, Appeals Committee and the court could be involved.

On the facts and circumstances of this case, I find that the Lurambi Land Disputes Tribunal and the Western Provincial Appeals Committee did not have jurisdiction to adjudicate on this matter which relates to a dispute which includes ownership or title to land. Their decisions were therefore outside their legal mandate and *ultra vires*. The appeal will succeed.

Consequently, I allow the appeal and set aside the decisions of both the Appeals Committee and the Land Disputes Tribunal. I award the appellant the costs of the appeal, but each party will bear the costs of the proceedings of the Tribunal and the Appeals Committee, as no party appears to have raised an objection to the same during the proceedings therein.

Dated and delivered at Kakamega this 28th day of May, 2013

George Dulu
J U D G E