



**REPUBLIC OF KENYA**

**High Court at Busia**

**Civil Appeal 13 of 2011**

**CHARLES OTEBA ALEKE .....APPELLANT**

**VERSUS**

**ROBERT MULAMA SKAUT..... RESPONDENT.**

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

This appeal was filed by **CHARLES OTEBA ALEKE** hereinafter referred to as the Appellant through his advocates M/S. Maloba & company Advocates. He seeks to reverse the ruling of the Western Provincial Land Disputes Tribunal in relation to L.R. No.South Teso/Angoromo/733 as read in Busia PMC land Dispute No. 129 of 2009. The memorandum of appeal dated 27th April, 2011 and filed on 29<sup>th</sup> April, 2011 contains six grounds as shown below:

1. “ That the Land Disputes Tribunal erred in law and fact by revoking the award made by Chakol Divisional Land Disputes Tribunal which had rightly ordered for refund of purchase price.
2. That the Provincial Land Disputes Tribunal erred in law and fact by ordering for subdivision and distribution of L.R. No. South Teso/Angoromo/733 which it was clear that that transaction did not comply with the mandatory provisions of the Land Control Act Cap 302 Laws of Kenya.
3. That the Provincial Land Disputes tribunal erred in law and fact by failing to appreciate that any transaction involving agricultural land must go through the Land Control Board for consent for it to (be) lawful.
4. That the Provincial Land Disputes Tribunal erred in law and fact by making an order for execution of instruments of transfer by the courts Executive Officer which it lacked such jurisdiction.
5. That the Provincial Land Disputes Tribunal erred in law and fact by making orders against a brother to the appellant when the said brother was not a party to the case.
6. That the Provincial Land Disputes Tribunal erred in law and fact by dealing with a parcel of land registered under the registered land Act Cap 300 Laws of Kenya.”

The Appellant prays for the Western Provincial Land Disputes Tribunal award/ruling in case No.33 of 2010 as read in the lower court on 7<sup>th</sup> April, 2011 be quashed reverting to the earlier decision of the Chakol Divisional Land Disputes Tribunal. He also prays for costs both in the lower court and this court.

M/S. Maloba and Mr. Etyang advocates appeared for the Appellant and Respondent respectively. Counsel filed written submission and consented to the court relying on the materials presented and make

its judgment.

Before the court comes to the submissions, it is important to set out the history or background of this case in summary:

### **BACK GROUND.**

1. The Respondent Robert Mulama filed a claim case No. 12 of 2009, against the Appellant, Charles Oleke before Chakol Land Disputes Tribunal, which heard on 23<sup>rd</sup> September, 2009.
2. The Respondent claim was for 1 ½ acres he bought from Appellant at Kshs.57,000/= from parcel South Teso/Angoromo/733.
3. The Tribunal after hearing the parties and their witnesses made the following ruling:

**“.....The court rules that the plaintiff Mr. Robert Mulama be refunded his Kshs.57,000/= (Fifty seven Thousand shillings only) and accrued interest of Kshs.20,000/= (Twenty Thousand shillings only) by the defendant Mr. Charles Aleke.”**

4. Robert Mulama who was the plaintiff in the Tribunal case and the Respondent in this appeal moved to the Provincial land Dispute Appeals tribunal and filed appeal No. 33 of 2010.
5. The Appeals tribunal revoked the Chakol Land Disputes Tribunal ruling and in its ordered place that Charles Ateba Aleke , who is the Appellant in the current appeal, to “carry out the subdivision of Land South Teso/Angoromo/733 of 3.6 ha and give 1 ½ acres to Robert Mulama Skaut, in accordance with their land sale contract or agreement.” It also directed the court Executive officer to execute all documents necessary to implement the order.
6. The Appeal Tribunal verdict is dated 24<sup>th</sup> June, 2010 going by the dates indicated against the signatures of the Tribunal members.
7. The appeals Tribunal award was forwarded to the Busia S.R.M court through a letter dated 4<sup>th</sup> February, 2011 and received in court on 14<sup>th</sup> February, 2011 going by the date stamp. The forwarding letter which is part of the record of appeal indicates the verdict was read to the parties on 26<sup>th</sup> January, 2011 and the 60 days of appeal explained.
8. The appeal to this court was filed on 29<sup>th</sup> April, 2011. This clearly shows the 60 days lapsed on or about 27<sup>th</sup> March, 2011 and the appeal was filed about 33 days after the expiry of the 60 days.

### **SUBMISSIONS:**

The Appellant counsel submitted on grounds 2 and 3 together under the heading “**Lack of Land Control Board Consent.**” The counsel also submitted on the grounds relating to the Tribunals powers that is grounds 4,5, and 6 under the heading “**Lack of jurisdiction.**”

The Respondent counsel also filed written submission and addressed the issue of the Land Control Board Consent and the Tribunals jurisdiction among others. Counsel also filed a list of authorities and annexed the relevant portion of the Land Disputes Tribunal Act No.18 of 1990 and copy of the following cases;

1. Eldoret H.C.C.C. No.151 of 2000 **David Cheluget –V- Kipsang Chepkwony and,**
2. Nakuru H.C.Misc. Application No. 47 of 2004 **Harrison -V- Ndungu Kungu (Applicant) V. Kimunja Kamama ( Interested Party).**

## **THE STATUTORY PROVISIONS:**

This being an appeal from the decision of the Provincial Appeal Tribunal section 8 (8) and (9) of the Land Disputes Tribunal Act No.18 of 1990, now repealed, under section 31 of the Environment and Land Court Act. No. 19 of 2011, are relevant. They state:.

**“ 8 (8) The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.**

a) Either party to the appeal may appeal from the decision of the Appeals Committee to the High court on a point of law within sixty days from the date of the decision complained of: Provided that no appeal shall be admitted for hearing by the High court unless a judge of that court has certified that an issue of law (other than customary law) is involved.”

Even though the grounds in the memorandum of appeal are referring to both errors in law and fact this court will only confine its decision on issues of law as clearly required of it under subsection (8) above.

This appeal was admitted for hearing by a judge of this court on the 19<sup>th</sup> September, 2011 after which the record of appeal was filed on 10<sup>th</sup> November, 2011. By the time the directions of 19<sup>th</sup> September, 2011 were given, there was no material before the court to show or suggest that the Appeals Tribunal ruling had been brought to the attention of the parties before being read in Busia S.P.M. C. Land Dispute case No.129 of 2009 on 7<sup>th</sup> March, 2011. Had the Provincial Commissioners' letter dated 4<sup>th</sup> February, 2011 forwarding the Provincial Appeals proceedings that shows the award had been read to the parties on 26<sup>th</sup> January, 2011 been brought to the attention of the Honourable Judge before making the orders of 19<sup>th</sup> September, 2011 then appropriate attention would have been given and orders accordingly issued. It now falls upon this court to give directions on the letters effect to the proceedings herein.

I have perused the proceedings forwarded by the said letter and I do not find any other entry by the Appeals Tribunal members after they signed their order dated 24<sup>th</sup> June, 2010. Had the Appeals Tribunal members been the ones who read their ruling to the parties they would have made the relevant entry which would have formed part of the proceedings. The letter dated 4<sup>th</sup> February, 2011 by the Provincial Commissioner does not disclose the person or persons who read the verdict to the parties and it cannot be taken to form part of the proceedings of the Appeals Tribunal. It is therefore the finding of this court that there is nothing on the Appeals Tribunal proceedings to show their award or verdict was ever led to the parties by the Tribunal for the 60 days right of appeal to start running. The 60 days right of appeal therefore started running after the ruling of the Appeals Tribunal was read over to the parties by the lower court in SPM. C. Land Case No. 129 of 2009. The lower court record shows the verdict was read on 7<sup>th</sup> March, 2011 and that is the time the prescribed days within which a party may file an appeal started running. The appeal was filed on 29<sup>th</sup> April, 2011 which was about 53 days after the reading. The appellant was within time by the date the appeal was filed.

The Tribunals powers were as limited in section 3 (1) of the Land Disputes Tribunal Act which stated:

**“3.(1) Subject to this Act, all cases 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.”

The claim the Respondent filed with the Chakol land Disputes Tribunal was for 1 ½ acres of Land from

South Teso/Angoromo/733 he had brought from the Appellant. The Tribunal declined to grant the Respondent the land and ordered he get a refund of the price paid being Kshs.57,000/= plus interest of Ksh.20,000/=. The Respondent was not satisfied and went to the Appeals Tribunal which reversed the Chakol Land Disputes Tribunal decision and granted him the 1 ½ acres. From the clear provisions of section 3 (1) of the Land Disputes Tribunal Act, the Chakol land Disputes Tribunal had no jurisdiction to entertain the claim. The claim could not fall under those contemplated under section 3(1) (b) of the said Act as the Respondent was not registered in the title as one of the owners in common. His claim lay on a contract of sale and as the land was registered under the then Registered land Act Cap 300 of Laws of Kenya, Section 159 thereof required such a claim to be filed in a court of law and not a tribunal.

Likewise , the Appeals Tribunal verdict awarding the Respondent 1½ acres of land was without jurisdiction and hence null and void for the same reasons. Even the Disputes Tribunal awarding the Respondent refund of the purchase price paid and interest had been made without jurisdiction as such an order is beyond those contemplated under S. 3 (1) of the Act.

This court concurs with the decisions of my brothers in *Eldoret H.C.C.C No.151 of 2000* and *Nakuru H.C. Misc. Application No.47 of 2004* to the effect that the learned Magistrates were bound to adopt the decision of the Tribunal as filed without making an inquiry as to the legality or otherwise of the award.

The decisions, awards, rulings and even the verdict of Tribunal established under the Land Disputes Tribunal Act are subject to appeals to this court as clearly indicated under section 8 of the Act. In addition this court has supervisory powers over such tribunals and where appropriate judicial review orders may be issued. The Appellant has in the submissions indicated the desire to have the Chakol District Land disputes Tribunal award reverted to after the Appeals Tribunal is quashed. The Respondent submits that the Appeal should be dismissed and the orders of the Appeal Tribunal be allowed to subsist. It is important to look at the provisions of the Land Control Act Cap 301 of Laws of Kenya in relation to contract of sale of land.

It has not been disputed that the Land Respondent was buying from the appellant was agricultural land and therefore subject to the Land Control Board consent being obtained within six months of the agreement. Sections 6 (1) and 8 (1) of the said Act are relevant. The sale agreement herein was in the year 2000 and both parties have conceded that no consent was obtained from the Land Control Board within the time prescribed. Under S.6 (1) of the Land Control Act the sale agreement became void and hence incapable of being enforced but the monies or consideration paid under the agreement is recoverable under section 7 of the said Act which states:

**“ 7. If any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid, but without prejudice to section 22.”**

The Chakol Land Disputes Tribunal had ruled that Respondent be refunded the purchase price paid of Kshs.57,000/= and interest of Kshs.20,000/=. Their proceedings do not indicate how the interest of Kshs.20,000/= had been arrived at. As earlier on indicated, the Chakol Land Disputes Tribunal had no power to deal with the claim concerning the registered land and its order of refund was beyond its powers.

## **FINDING.**

1. That in view of the provisions of section 3 (1) of the Land disputes Tribunal Act No. 18 of 1990 and section 159 of the Registered Land Act Cap 300 of Laws of Kenya, now repealed under the Environment and Land Court Act and the Land Registration Act No. 3 of 2012 respectively, both the Chakol Land Disputes Tribunal and the Kakamega Appeals Tribunal did not have jurisdiction to hear and determine the Respondent's claim being a claim of 1 ½ acres of land purchased from appellant from parcel South Teso/Angoromo/733.
2. That the orders issued by both the Chakol Land Disputes Tribunal and the Kakamega Land

Disputes Appeals Tribunal in respect of the claim were without jurisdiction and hence void abinitio.

3. That while allowing the appeal it is also important that this court do issue orders to address the Respondent's claim in relation to the agreement of sale of land that has become void by operations of section 6(1) of the Land Control Act Cap 302 of Laws of Kenya.

From the foregoing, the court orders as follows;

1. That the appeal is allowed and the verdict of Kakamega land Dispute appeal Tribunal of 24<sup>th</sup> June, 2010 read and adopted in SPMC. Land case No.129 of 2009 is hereby quashed and in its place substituted with an order that the Appellant do refund to the Respondent the Kshs.57,000/= he received pursuant to the sale of land agreement of 25<sup>th</sup> May, 2000 with interest from that date until payment in full.

2. As the Appellant is the one who breached the sale agreement by his failure to obtain the Land Control Board consents and the Appellant filed his claim to the Tribunal which had no jurisdiction to deal with the matter, each party will bear his own costs both in this appeal and in Busia SPM C. Land case No.129 of 2009. It is so ordered.

**S. KIBUNJA,  
JUDGE.  
23<sup>RD</sup> MAY, 2013.**