



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

CIVIL APPEAL NO. 26 OF 2012.

1. **BONFACE SIDONGE**
2. **JOHN WANDERA**
3. **BENARD KWECHEKHO**
4. **VINCENT OKOTCHI.....APPELLANTS**

VERSUS

WYCLIFFE OMOLO ONGOMA.....RESPONDENT

(AN APPEAL AGAINST THE DECISION AND AWARD OF THE WESTERN PROVINCE LAND DISPUTES APPEAL COMMITTEE IN APPEAL NUMBER 14 OF 2010 READ TO THE PARTIES ON 24TH APRIL, 2012 IN LAND DISPUTE CASE NUMBER 22 OF 2011)

JUDGMENT.

The Appellants through M/S. Bogonko Otanga & co, advocates filed this appeal setting out three grounds as shown hereinbelow;-

1. That the Western Province Land Disputes Appeal Committee erred in Law in entertaining a claim in respect of L.R. NO.BUNYALA/BULEMIA/249 when the registered proprietors thereof had passed on and letters of Administration intestate had not been issued to the Appellants.
2. THAT, the Western Province Land Disputes Appeals Committee erred in law in upholding the decision of Budalangi Land Disputes Tribunal ordering the appellant to be evicted from L.R. No. BUNYALA/BULEMIA/249 when the Appellants are the true beneficiaries of the said parcel of land by virtue of being sons to the registered proprietors.
3. THAT, the Western Province Land Dispute Appeals Committee erred in law in upholding the decision of Budalangi Land Disputes Tribunal when the said tribunal had no jurisdiction to entertain a claim for specific performance of agreement made in 1989.

The appeal is opposed by the Respondent who is represented by M/S. J.V. Juma & company advocates. When the appeal came up for hearing, Mr. Otanga and Mr. Juma for the Appellants and Respondent respectively agreed to proceed by filing written submissions. The Appellants' counsel filed their submissions dated 7th August, 2013 on the 8th August, 2013. Counsel for the Respondent filed their written submissions dated 14th August, 2013 on the 15th August, 2013. The court has carefully considered the record of appeal including the proceedings before the Budalangi Land Disputes Tribunal and the Western Province Land Disputes Appeals Committee in respect of land parcel Bunyala/Bulemia/249. The court has also considered the submissions by both counsel and find as follows;-

1. That even though Form A which contains the application filed with the Budalangi Land Disputes Tribunal shows that the Respondent was claiming for a portion of land Bunyala/Bulemia/249 purchased from Magio Ngolo and Akhenda Ngolo, the heading of the proceedings before the Land Disputes Tribunal indicated the claim was a boundary dispute. The award of the tribunal was to the effect that the Respondent was **the bonafide owner of the land in dispute after recognizing the boundary he has shown. We also request Magistrate's court to issue an eviction order for Vincent Okotchi to build his house in his father's land Ahenda Ngolo**. These orders are within the powers of the Tribunal as they relate to boundary and trespass. The tribunal further asked the Respondent to initiate the necessary processes to get his title from Bunyala/Bulemia/249.
2. That the Appellants were not satisfied with the decision of Budalangi Land Dispute Tribunal and filed an appeal to the Western Province Land Dispute Appeals Committee. The Committee rejected the appeal indicating that the ruling by the Budalangi land Dispute Tribunal still stands. The Appeals Committee went ahead to add an order of their own to the effect that the Respondent do proceed to invite the District Land surveyor to excise his portion of land from Bunyala/Bulemia/249. The committee further directed the Executive Officer of the court to proceed to sign the land transfer documents to implement the order. It further ordered the parties to keep peace.
3. That it is quite clear by the time the initial claim was filed before the tribunal, the registered owners of Bunyala/Bulemia/249 had already died. There is no indication as to whether any of the parties in the case before the tribunal and before this court has filed and obtained grant of letters of administration in respect of the estates of the deceased registered owners of the said land.
4. That the evidence adduced before the Land Disputes Tribunal and the Provincial Appeals Committee clearly shows that the Respondent and his family had been occupying a portion of Bunyala/Bulemia/249 even before the death of the registered owners of the land. It is in respect of the portion the Respondent has been using that he went to the tribunal and filed the claim.
5. That the power of the Land Disputes Tribunals was provided for under section 3 (1) of the Land Dispute Tribunal Act which has since been repealed. Among the powers of the tribunal under the said Act is to determine boundaries to land and trespass. Looking at the decision of the Budalangi Land Disputes Tribunal, they found that the portion in question belonged to the Respondent after confirming the position of the boundaries he had shown them. This was not in excess of their powers and this court finds no fault in that decision. The tribunal further directed the said Vincent Okotchi, who is the fourth Appellant, to move from the portion and put up his house on the portion meant for his father. These orders were not outside the powers of the tribunal. The tribunal also asked the Respondent to initiate the necessary processes to acquire a title for his portion from Bunyala/Bulemia/249. The court finds nothing wrong with this unsolicited advice.
6. That the Western Provincial Land Dispute Appeals Committee upheld the decision of the Budalangi land Disputes Tribunal but erred in adding order No. 3 to their ruling and effectively changed the tribunals order. Order No. 3 is in excess of the powers given to the Land Disputes Tribunal under section 3 (1) of the Land Disputes Tribunal Act (now repealed).
7. That the Land Dispute Tribunal and the Appeals Committee did not have power to give directions on how land registered with persons who have died would be distributed. This can only be done through following the provisions of the Law of Succession Act Chapter 160 of the Laws of Kenya. The Appellants and the Respondent or any other person interested with the estates of the deceased registered owners of Bunyala/Bulemia/249 have no choice but to move the High court as provided for under Chapter 160 of the Laws of Kenya.

That having held as above, the court finds that the Appellants have only partially succeeded in the appeal and the following orders are issued:-

- a. That order No. 3 of the Western Province Land Disputes Appeals Committee of 11th November, 2010 was issued without jurisdiction and is therefore void ab initio and is hereby set aside.
- b. That subject to order (a) above the appeal is dismissed.
- c. That due to the circumstances surrounding this case and the special relationship the parties herein have in relation to land parcel Bunyala/Bulemia/249, each party will bear their own costs.

It is so ordered.

S. M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 23rd DAY OF October, 2013.

IN THE PRESENCE OF;

JUDGE.