



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL NO. 105 OF 2008

JULIUS OBUGA MASIVA..... APPELLANT

VERSUS

HUDSON K. OBUGA

DAVID K. ANDIVA RESPONDENTS

CHARLES E. ABUKE
JUDGMENT

1. The Appellant, **JULIUS OBAGA MASIVA**, being dissatisfied with the decision of the Appeals Committee of the Land Disputes Tribunal Western Province delivered on the 18th of April 2008 in case No. 56 of 2006 at Kakamega and adopted by the Senior Resident Magistrate court on 14th October, 2008 in Misc. Application No. 76 of 2005 has appealed to this court on the following grounds:-

1. That the Provincial Land Disputes Tribunal Appeals Committee, Western Province at Kakamega exceeded jurisdiction in ordering the sub-division of the Appellant's land South Maragoli/Madzu/408 and or transfer 0.16 hectares of the said land to the 1st Respondent.
2. That the Appeals Committee erred when determining the said matter as five (5) of its members instead of three (3) members determined the said Appeal contrary to Section 8 (5) and 9 (2) of the Land Disputes Tribunal Act of 1990.
3. That in all circumstances of the case the Provincial Land Disputes Appeals Committee at Kakamega failed to act properly and or judicially.
4. The Appeals Committee, Western Province at Kakamega grossly erred in Law in acting discriminatively in the matter and being influenced by extraneous considerations while making his decisions and not by law as required of it by the Act.

2. During the Appeal, the Appellant was represented by Mr. Kundu. The 1st and 3rd Respondents were not present though served. The appeal against the 2nd Respondent was marked as abandoned/withdrawn on 30.6.11.

3. I have read the proceedings before the Appeals Committee. The same have been signed by five members instead of three members as provided for under **Section 8 (5) and 9 (2)** of the Land Disputes Tribunal Act of 1990.

4. The Appeals Committee exceeded its jurisdiction. It ordered the sub-division of the land. This contravened **Section 3 (1)** of the Land Disputes Tribunal Act which provides as follows:-

“S.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 boundaies 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.”

5. Consequently, the appeal has merit and is allowed. The decision of the Appeals Committee of the Land Disputes Tribunal, Western Province, regarding parcel **NO. SOUTH MARAGOI/MADZU/408** is set aside. Each party to bear own costs.

6. Orders accordingly.

Delivered, dated and signed at Kakamega this 2nd day of February, 2012

B. THURANIRA JADEN

J U D G E