

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL 5 OF 2004

PAULINE AKANA OKUNZA.....1ST APPELLANT

ALPHONCE AKATSA LUKOYE.....2ND APPELLANT

VERSUS

CICILIA MAKUMBO OKINDA.....1ST RESPONDENT

WILLIAM RAPHAEL OLWANDE.....2ND RESPONDENT

JUDGMENT

This is an appeal from the decision of the Provincial Land Disputes Appeals Committee dated 10th June, 2003.

The appellant's grounds of Appeal are that he was not given a hearing at the trial, that no proceedings were taken by the Appeals Committee, there was a mischarge of justice and that the Tribunal had been degazetted.

Parties agreed to file written submissions but no one complied with that consent. The record of Appeal shows that the case emanated from the decision of the Khwisero Land Disputes Tribunal in land case number 14 of 2002. The claimants were Paulina Akama Okunza and Alphonse Akatsa Lukoye while the defendants were Cicilia Makombo Okinda and William Raphael Olwande. The proceedings establish that the plaintiffs were claiming that the 1st defendant had sold their land to the second defendant. The purchase price from those proceedings is Ksh 150,000. The Khwisero Tribunal held in favour of the plaintiffs and the 2nd defendant appealed to the Western Province Land Disputes Appeals Committee. The plot number in the Khwisero Tribunal proceedings is given as KISA/WAMBULISHE/1499.

The Appeals Tribunal overturned the decision of the Khwisero land Disputes Tribunal and held that since the appellant had purchased the land and was the registered owner, then his claim of ownership was genuine; the Khwisero Tribunal had held that the 2nd defendant could be refunded his money.

The proceedings before the Land Disputes Appeals Committee show that all the parties were present on 18th June, 2003 when the case was heard. None of the parties was given an opportunity to present his case. The appellant herein contends that the Appeals Tribunal had been degazetted but there is no evidence to that effect. I will therefore hold that the Committee was lawfully constituted.

Since the dispute involved sale and purchase of land as well as allegations of fraud involving the sale of the land. I do find that both the Khwisero Land Disputes Tribunal and the Western Province Land Dispute Appeals Committee lacked jurisdiction to determine the matter. The Tribunals' jurisdiction provided for under section 3 of the Land Dispute Act 18 of 1990 (now repealed) did not include evaluation of allegations of fraud, contractual relationship or cancellation of title deeds. By ordering that the 2nd defendant be refunded his purchase price that was tantamount to cancelling his title deed.

In the end this appeal is allowed. However, by allowing the appeal it does not mean that the decision of the Khwisero Land Disputes tribunal will be valid. The decision of the Khwisero land Disputes Tribunal is also set aside and will not assist the appellant in this case: The 2nd respondent shall continue utilizing

his land and exercise his right of ownership. The 2nd appellant is at liberty to pursue his claim through a court of competent jurisdiction.

Each party shall meet his own costs of the two Tribunals and of this Appeal. It is so ordered.

Delivered and dated at Kakamega this 26th March, 2012

SAID J. CHITEMBWE

J U D G E