



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL 71 OF 2010

1. LEONARD WESONGA BUSURU

2. CHRISTOPHER BUNYASI ODIBINE

3. VINCENT NDUBI..... APPELLANTS

VERSUS

VICTORIA WABWIRE RESPONDENT

JUDGMENT

This appeal arises from the decision and award of the Provincial Land Disputes Appeals Tribunal, Western Province in appeal No. 63/09.

The appeal is premised on the following grounds:-

1. That both the Division and Appeals Committee lacked jurisdiction to entertain a claim for specific performance and subdivision and ownership of land.
2. That the Tribunal acted *ultra vires* in ordering for succession to be commenced, and ordering for specific performance.
3. That the Tribunal erred in law in entertaining a claim which was statutory time barred, as the purported sale agreement was made in 2002.
4. That the appellants had no locus standi to be sued.
5. That the proceedings and decision of the Tribunal is a nullity as it contravenes the express provisions of Act No. 18 of 1990.
6. That the composition of the tribunal was illegal.

7. That the claim before the Tribunal was null and void pursuant to the Land Control Act and as such un-enforceable.

8. That the appeals Committee erred in law on relying on matters outside the proceedings from the Division Tribunal.

On 15.7.11, directions were given by the court that the appeal do proceed by way of filing written submissions. The Respondents thereafter did not attend court or file their submissions. The appellants filed their written submissions.

I have considered the grounds of appeal and the written submissions.

The decision made by the Provincial Appeals Tribunal upheld the ruling of the Nambale Land Disputes Tribunal which had ruled as follows:-

“1. The 3 sons of the late Busuru Odibine should file Succession (Cause) to get the administration of the estate of the late Busuru Odibine.

2. Victoria to be given five acres. Two and a half acres she bought from Lenard Busuru and Christopher Bunyasi Odibine in the upper section. 2 acres bought from Busuru Odibine himself on the lower side. Half an acre next to it bought from Vincent Ndubi.

3. The Government Surveyor s to demarcate the 5 acres and be transferred to Victoria Wabwire.”

The subdivision of the land and the transfer of the five acres of the same is outside the powers conferred on the Tribunal under **S.3(1)** of the Land Disputes Tribunal Act No. 18 of 1990 which stipulates 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) Tresspass to land.

Shall be heard and determined by a Tribunal established under section 4.”

The proceedings before the Tribunal were against the appellants LAONARD WESONGA BUSURU, CHRISTOPHER BUNYASI OBINIE and VINCENT NDUBI yet the land in question, that is land parcel NO. BUKHAYO/KISOKO/241 was registered in the name of BUSURU ODIBINE who was deceased. It is clear from the Proceedings of the Tribunal that of the tribunal that no letters of grant of administration had been obtained in the estate of the said BUSURU ODIBINE. Indeed the Tribunal ruled that “the three sons of the late BUSURU OBINIKE should take Succession to get the administration of the estate of the late BUSURU ODIBINE (sic).” It follows that the Tribunal was dealing with matters of Succession. The tribunal therefore acted in excess of its jurisdiction.

The claim by the Respondent before the Tribunal was for specific performance for the transfer of a total of five (5) acres of land. The tribunal once again acted in excess of its jurisdiction in entertaining a claim for specific performance.

The record of the Provincial Appeals Land Disputes Tribunal’s decision is signed by five members. The Tribunal was improperly and unlawfully constituted and in breach of **S. 8 (5)** and **S. (2)** of the Land Disputes Tribunal Act.

With the foregoing, I find that the appeal has merit and the same is allowed. The decision of the Provincial Land Disputes Appeals Tribunal, Western Province case No. 63/09 and that of the Nambale/Busia Land Disputes Tribunal claim No. 2/09 regarding Title No. BUKHAYO/KISOKO/241 are both set aside.

Each party to bear its own costs.

Delivered, dated and signed at Kakamega this 15th day of March, 2012.

B. THURANIRA JADEN
J U D G E