



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL APPEAL 2 OF 2010**

**JOHANA LISUTSA LILUNGU .....**  
**APPELLANT**

**V E R S U S**

**CHARLES LILUNGU MUCHALWA .....**  
**RESPONDENT**

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

This is an appeal arising from the decision of the Western Provincial Land Disputes Tribunal in appeal 15 of 2008. The appellant's grounds of appeal are that:-

- 1.The Provincial Land Disputes Tribunal erred in law and facts by miscomprehending the matter and issues before it .*
- 2. The Provincial Land Disputes Tribunal and the Shinyalu Land Disputes Tribunal lacked jurisdiction to hear and determine the matter and also the claim was time barred and the claimant lacked locus standi.*
- 3.The Provincial Land Disputes Tribunal dismissed the appellant's appeal yet he is the registered owner of plot No. ISUKHA/MUKHONJE/759 measuring 0.70 Ha.*
- 4.The tribunal failed to analyze the issue before it wholly and properly and its decision is biased and unlawful.*

The appellant submitted that both himself and the respondent have two plots each. When their late father died the appellant had his own plot and the respondent had his own plot. It is only after the death of their father that is when the respondent claimed land from him. According to the appellant this is the seventh suit by the respondent yet he is the one who educated him.

On the part of the respondent the suit property **ISUKHA/MUKHONJE/759** belonged to their later father who had two wives. Their late father gave land to his two wives and the suit property was given to the first wife who is their mother. Since their mothers were old their father resolved that each of the eldest son to be registered and later divide to the other children. His brother from the 2<sup>nd</sup> wife has divided land to his brothers without problems but the appellant has refused to subdivide the land. He has been cultivating the land from 1985 until the year 2000 when the appellant stopped him. The respondent took the appellant to the chief and the tribunals and they all decided in his favour.

From the proceedings of the Shinyalu Land Disputes Tribunal in claim No.4 of 2007 the respondent herein reiterated what he submitted before this court. He stated that the appellant removed the boundary marks that were put by his father. According to the respondent the land was bought through cattle offered for their sister's dowry. On his part the appellant stated that he bought the suit property together with his father. His father contributed two animals (cattle) while the appellant paid 250/=. The appellant sent the money when he was in Mbale Uganda. The appellant further testified before the tribunal that his father sold the land secretly to one Isiah Muteshi and he took him to court. The appellant was given back the land but his father gave out his portion to Isiah. The appellant later registered the portion in his name. He is willing to give the claimant a portion of the land.

The Shinyalu Land Disputes Tribunal resolved that the appellant subdivide the said parcel of land into two equal portions and one to be registered in the name of the respondent. The appellant appealed to the Western Provincial Appeals Tribunal and the tribunal dismissed the appeal for lack of new evidence.

From the proceedings of both tribunals it is clear that the parties herein have other portions of land elsewhere. The suit property is used for cultivation. According to the appellant the land belongs to him as he participated in the purchase of the same. It is the appellant's evidence that they bought the land together with his father from one Samuel Lilungu. He did the registration when his father was alive. It is the appellant's position that the respondent took him to the chief, to the District Officer and up to the High Court and that he had the High Court proceedings at home. From the pleadings herein it is clear that this matter has been deliberated upon extensively. The main issue for determination is whether the two tribunals had jurisdiction to determine the dispute. Under **Section 3(1)** of the Land Disputes Tribunals (**Act No.18 of 1990**), now repealed, the jurisdiction of those tribunals is limited. The tribunals have no authority to cancel the title deed of a registered proprietor. The appellant herein is the registered proprietor of plot **No. ISUKHA/MUKHONJE/759**. He claims to have bought the property and his late father sold his share. The respondent is claiming a share of that property. It is on record that both parties herein were given land by their father. It was incumbent upon the respondent to file his case before the High Court and establish that the registration of the appellant as the proprietor of the suit property was in trust for himself as well as for the respondent. The two tribunals lacked jurisdiction to order for the cancellation of the title deed and subsequent subdivision of the suit property.

In the end I do find that the tribunal exceeded its lawful mandate and lacked jurisdiction to entertain the matter. Although the respondent can claim the right to utilize that property but it is only the High Court that can determine whether he should be one of the proprietors. The end result is that the appeal has merit and the same is allowed. The decisions of the Shinyalu Land Disputes Tribunal and that of the Western Provincial Appeals Committee are hereby set aside. Each party shall meet its own costs.

**Delivered, dated and signed at Kakamega this 23<sup>rd</sup> day of May 2012**

**SAID J. CHITEMBWE**

**J U D G E**