



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL 11 OF 2007

ASINDI OGANDA 1ST APPELLANT

PETER JAOKO ASINDI 2ND APPELLANT

V E R S U S

ALFRED J. ASINDI 1ST RESPONDENT

SIMON O. ABUTI 2ND RESPONDENT

JAMES O. ASINDI 3RD RESPONDENT

J U D G M E N T

The appellants filed this appeal against the decision of the Western Provincial Appeals Committee. The main grounds of appeal are:-

- 1. That the Appeals Tribunal erred in law in upholding the decision of the Butere Lands Disputes Tribunal whose proceedings were a nullity.*
- 2. That both the Western Provincial Appeals Committee and the Butere Lands Disputes Tribunal acted in excess of their jurisdiction.*
- 3. The appeals committee erred in law in upholding the decision of the Butere Land Disputes Tribunal without taking into account the fact that plot number MARAMA/SHIRO TSA/984 had long been closed and the said title did not exist and therefore the Tribunals exceeded their jurisdiction by ordering cancellation of land parcels No. MARAMA/SHIRO TSA/1526, 1527 and 1529 which titles were not the subject of the dispute.*

Mr. Getanda counsel for the appellants in his written submission simply elaborated on the above grounds and urged the court to allow the appeal.

On his part M/S Momanyi Gichuki & Company Advocates counsel for the respondents submitted that the decisions of the two tribunals were proper and their verdicts should be upheld.

The history of the matter is that the 1st appellant Asindi Oganda was the registered proprietor of the

original suit land **MARAMA/SHIRO TSA/984**. The respondents herein are his children and their case before the Butere Land Disputes Tribunal vide case number 1 of 2004 was that their father called surveyors to sub-divide the above land so that he could distribute to them. The 1st respondent Alfred Jaoko paid the surveyors a sum of KShs.6,400/= and he was to be given plot number **MARAMA/SHIRO TSA/1527** measuring 0.13 Ha. Before the Butere Tribunal he stated that he was claiming that land from his father. The 2nd respondent James Asindi informed the Butere Tribunal that he spent KShs.7,275/= and produced the receipt dated 7th June 2001. His evidence was that plot number 984 was measuring 1.14 Ha. and was to be divided into eight portions. The Butere Land Control Board approved the sub-divisions on 14th December 2000 however, the appellant later on refused to register the respondent who was to get plot number **MARAMA/SHIRO TSA/1529**.

The 3rd respondent Simon Abuti testified before the Butere Tribunal that he was to get plot number **MARAMA/SHIRO TSA/1526**. He paid the survey fees of KShs.6,400/=. He later on discovered that the whole land had been registered in the name of his brother Peter Jaoko, the 2nd appellant.

The verdict of the Butere Land Disputes Tribunal was that the 1st appellant had no grounds to deny his sons from getting any portions from his land. The tribunal proceeded to order that plot number **MARAMA/SHIRO TSA/1527** measuring 0.13 Ha. registered in the name of the 1st appellant be transferred to the 1st respondent, plot number **1529** be transferred to the 2nd respondent and plot number **1526** registered in the names of the two appellants be cancelled and thereafter be registered in the names of the five remaining sons who are Wycliffe Asindi, Michael Asindi, Joseph Asindi, Simon Abuti and Peter Asindi each getting 0.13 Ha.

The appellants filed the appeal before the Western Province Appeals Committee vide case number 25/15. The verdict of the Appeals Committee was that the appellants were to comply with the ruling of the Butere Land Disputes Tribunal and ordered all the parties to keep peace. The respondents filed before the Chief Magistrate Misc. Award No. 122 of 2004 which matter is still pending awaiting the outcome of this appeal.

The main issue for determination is whether both tribunals had jurisdiction to entertain the claims by the respondents and whether the tribunals acted in excess of their powers. Under the Land Disputes Tribunal Act (No. 18 of 1990) Section 3(1) thereof provides for the jurisdiction of the land disputes tribunal as follows:-

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 boundaries 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.”

It is clear from the above provisions that a land dispute tribunal cannot cancel a registered title. The respondents' claim before the tribunal was meant to enforce a promise by their father that he was going to give them land. Before the Appeal Committee the 1st appellant stated that the children wanted to sell the land. The 1st appellant was the registered owner of the original plot no. **MARAMA/SHIRO TSA/984** and since he was alive he had the right to give his land to whoever he wanted. The Butere Land Disputes Tribunal had no powers to force the 1st appellant to divide his land and have it transferred to the respondents. All what the respondents could have claimed was the amount they paid the surveyors and that claim could not have been entertained by the tribunal. Given the nature of the claim I do find that both tribunals lacked jurisdiction to entertain the respondents' claim which did not fall within the provisions of Section 3 of the Land Disputes Tribunals Act. The respondents were not claiming a right to

occupy or work on the suit land, it was not a claim for determination for boundaries, the respondents' claim was based on ownership which could not have been determined by the tribunal.

Similarly, the tribunal lacked jurisdiction to cancel the title deeds which had resulted from the subdivision of plot 984. That was outside its jurisdiction. I do find that the appeal has merit and the same is allowed with costs to the appellants.

Delivered, dated and signed at Kakamega this 22nd day of May 2012.

SAID J. CHITEMBWE
J U D G E