REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL 59 OF 2009

JOSEPH OMONDO OTERA ……. APPELLANT

V E R S U S

BENSON A. OKOLLO …… RESPONDENT

JUDGMENT

This is an appeal from the decision of the Western Provincial Appeals Tribunal in case number 145 of 1999. The appellant listed five grounds of appeal namely that the Tribunal was improperly constituted, the appeals committee's decision gave no reasons and did not record the presentations of the parties before them, that the matter before the committee related to a contract of sale of land which is not within the jurisdiction of the tribunal and that the orders of the tribunal are ultra vires.

Counsel for the appellant in his written submissions stated that the claimant before the tribunals based his claim on contract and even produced sale agreements to prove his case. The claim was therefore not within the jurisdiction the tribunal. Counsel further submitted that the purported sale agreement was made in 1971 and the tribunal case was filed in 1999 and therefore the claim was time barred.

Although the court had indicated that parties were to file written submissions only the appellant did so. The proceedings herein show that there was a land dispute before the Lurambi District Tribunal. The respondent was the plaintiff in that suit and his claim was that he bought three acres of land from one Otera at an agreed price of KShs.1,200/= in 1971. The tribunal found in favour of the plaintiff and made an order that the plaintiff be given the three acres. The matter went before the Western Provincial Appeals Committee and the committee resolved that the family of the deceased vendor, Otera, be given two acres and the remaining portion be given to the respondent herein.

The only relevant ground of appeal is whether the two tribunals had jurisdiction to entertain the respondent's claim. It is evident from the proceedings of both tribunals that the respondent's claim was based on contract. This could have called for evidence and issues relating to transfers and consent from the relevant Land Control Board. Under **Section 3 (1)** of the Land Disputes Tribunal Act (**Act No.18 of 1990**) the jurisdiction of the tribunals was limited to only issues permitted by that section. In effect the respondent herein was enforcing a contractual claim before the tribunal. That was outside the jurisdiction of the two tribunals. I do therefore find that the two tribunals lacked jurisdiction to entertain the matter. As to the issue of time limitation it was the respondent's claim before the tribunals that he has been in occupation of the land and therefore if he still claims to have bought the land he can file a suit before a proper court.

In the end the appeal herein is allowed. Both the Lurambi Land Disputes Tribunal and the Western Provincial Appeals Committee lacked jurisdiction to entertain the matter. However, if the respondent is in occupation of the disputed property he shall remain in occupation until the matter is heard and determined by a court of competent jurisdiction. I do order that each party meets his own costs.

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

SAID J. CHITEMBWE

J U D G E