



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL NO. 18 OF 2010

(An appeal from the decision of the Western Provincial Land Dispute Appeals

Tribunal sitting at Kakamega in Land Disputes Appeal No. 105 of 2008

Delivered on the 21st day of January, 2010)

ERICK MALOBA WAMBUNDA APPELLANT

VERSUS

1. JULIUS SHIUNDU AMBUNDA

2. JENIFER LUBALE WAMBUNDA RESPONDENTS

JUDGMENT

The appellant, ERICK MALOBA WAMBUNDA, being dissatisfied with the decision of the Provincial Land Disputes Appeals Committee, Western Province (hereinafter Appeals Committee) preferred this appeal on the following grounds:-

“1. That the Provincial Land Disputes Appeals Committee erred in law and fact in failing to note and rule that the respondent’s claim before the Matungu Land Disputes Tribunal was instituted out of time and was statute-barred and it ought to have allowed the appellant’s appeal before it and proceeded to dismiss the respondent’s claim as filed before the tribunal.

2. The Provincial Land Disputes Appeals Committee erred in law in rejecting the appellant’s appeal yet the Mumias Division Land Disputes Tribunal had erred by purporting to arbitrate over the issue of succession and division of the estate of the father of the parties hereto which issue was not within its jurisdiction and which had already been heard and determined by a superior court of competent jurisdiction.

3. The Provincial Land Disputes Appeals Committee erred in rejecting the appellant’s appeal yet the Mumias Division Land Disputes Tribunal had erred by purporting to order the cancellation and or rectification of title or mutations in respect of title No. E/WANGA/LUBINU/379 (which title was non-existent) and or the sub-divisions created therefrom, which orders were outside the ambit of the tribunal and the appeals committee.

4. The Provincial Land Disputes Appeals Tribunal erred in upholding the verdict Mumias Division Land

Disputes Tribunal yet the proceedings and verdict of both the tribunal and appeals tribunal were **ultra vires**, incompetent, null and void **ab initio** and further the composition of the appeals committee was improper and unlawful and its proceedings and verdict were incompetent and without legal efficacy and ought not be allowed to stand as it is a perpetuation of an illegality.

5. The Western Provincial Land Disputes Appeals Tribunal failed to analyse the issues before it critically, wholly or properly and its decision and that of the tribunal were evidently predetermined, biased, flawed and indefensible and were arrived at in a cursory and perfunctory manner and are devoid of any sense, reasoning or justification and occasioned a serious miscarriage of justice.”

Mr. Akwala, advocate appeared for the appellant while Mr. Nandwa advocate for the respondents, JULIUS SHIUNDU AMBUNDA and JENIFER LUBALE WAMBUNDA. The counsels filed written submissions which I have duly considered.

The Appeals Committee in its determination confirmed the decision of the Mumias Land Disputes Tribunal. The Mumias Land Disputes Tribunal made orders for the subdivision of land parcel No. E/WANGA/LUBINU/379.

The Mumias Land Disputes Tribunal exceeded its jurisdiction which is set out in Section 3 (1) of the Land Disputes Tribunal which stipulates as follows:-

“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.”

The Appeals Committee therefore wrongly confirmed the decision of the Mumias Land Disputes Tribunal.

Both decisions of the Appeals Committee and the Mumias Land Disputes Tribunal are a nullity. That disposes of this appeal even without going into issues of whether the claim was time barred or whether there was Succession issues.

The Appeals Committee was comprised of five members contrary to the provisions of Section 8 (5) of the Land Disputes Tribunals Act which provides for a panel of three members. Consequently, both the Provincial Appeals Land Disputes Committee, Western Province and the Mumias Land Disputes Tribunal ruling to land parcel No. E/WANGA/ELUCHE/379 are set aside.

The dispute between the parties remains unresolved. The dispute to be taken to a competent court of jurisdiction. Each party to meet own costs.

Delivered, dated and signed at Kakamega this 28th day of June, 2012

B. THURANIRA JADEN
J U D G E