



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL 45 OF 2010

*(An appeal from the decision of the Provincial Land Dispute Appeals Committee, Western Province
in their Appeal No. 176 of 2006 dated 16.1.2007 but read on 24.4.2007)*

LUCAS
SHIBAKATI.....APPELLANT

VERSUS

THOMAS
TSILUMA.....RESPONDENT

JUDGMENT

This appeal arises from the decision of the Provincial Land Disputes Appeals Tribunal, Western Province dated 27.4.07 in the said decision, the Provincial Appeals Committee ruled that Land Parcel No. **KAKAMEGA/SHITOCHI/1646** belonged to **THOMAS MULAMA** (Respondent).

The Provincial Appeals Committee thus reversed the decision of the Land Disputes Tribunal, Shinyalu which had ruled that the proprietor of the said land was one **LUKAS SHIBAKALI** (Appellant).

The appeal is premised on the following grounds:-

- “1. The Western Provincial Land Disputes Appeals Committee erred in law by failing to constitute itself properly by allowing a Chairperson, a Secretary and four (4) members to adjudicate upon the case instead of three (3) members only contrary to S. 9 (2) of the Land Disputes Tribunal Act No. 18 of 1990.
2. The Western Provincial Land Disputes Appeals Committee erred in law by revoking the decision of Shinyalu Land Disputes Tribunal.”

The Provincial Appeals Committee panel that heard the dispute was comprised of six members. The decision was signed by four members. This contravened Section 8 (5) and Section 9 (2) of the Land Disputes Tribunal Act.

Arguments that the appeal can be referred to a properly constituted panel are not viable in view of the enactment of the new land law.

Both the Tribunal and the Appeals Committee made decisions on ownership of land. This was in excess of the jurisdiction conferred on them under Section 3 (1) of the Land Disputes Tribunal Act which provides 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 decision of both the Tribunal and the Appeals board are therefore a nullity.

The decision of the Provincial Appeals Committee, Western Province and the Land Disputes Tribunal, Shinyalu, relating to land parcel No. **KAKAMEGA/SHITACHI/1646** are both set aside.

The dispute between the parties remains unresolved. The dispute has to be taken to a court of competent 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