



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL 51 OF 2008

(An appeal from the decision and/or order of the LAND

PROVINCIAL DISPUTES APPEALS COMMITTEE vide Appeal

No. 15 of 2006 read and made known to the parties on 12th June, 2008)

BETWEEN

MICHAEL OTENGO WESONGAAPPELLANT

VERSUS

1. RAJAB OPUYA BARAZA

2. IBRAHIM M. BARAZA

3. SHABAN BARAZA.....ESPONENT

JUDGMENT

The Appeal herein is premised on the following grounds:-

1. The Provincial Land Disputes Appeal Committee and the Land Disputes Tribunal have no jurisdiction to determine disputes on the ownership and title to land registered under the Registered Act.
2. The Provincial Land Disputes Appeals Committee failed to consider and evaluate the fact that the appellant acquired the land in dispute i.e. Land Parcel **No. Bunyala/Budonga/738** over 40 years ago and that this is registered land held as a first registration that cannot be altered or cancelled under section 143 of the Registered Land Act.
3. The Provincial Land Disputes Appeals Committee failed to appreciate the fact that the appellant bought the land in dispute in 1967 from the father of the respondents the late Mzee Baraza Wakhulunya for Kshs.5,000/= who got the Land Registration in his own name as a first Registration.
4. That the Provincial Land Disputes Appeals Committee failed to consider the fact that the appellant has stayed on the land for more than 40 years and cannot now be removed as he is the owner of the said land since Land Adjudication and Registration thereof.
5. That the Provincial Land Disputes Appeals Committee failed to appreciate that the appellant failed to trace the sale agreement between him and the respondent's father due to lapse of time which is more

than 40 years since.

6. That the Provincial Land Disputes Appeals Committee has no jurisdiction to make orders affecting title of Registered Land and therefore they exceeded their powers under the law.

The firm of Omukunda & Co. Advocates appeared for the appellant. The Respondents appeared in person.

The Provincial Land Disputes Appeals Committee made the following orders:-

“1. The appeal is dismissed with costs.

2. That Nabakholo Land Disputes Tribunal Elders Court ruling stands and should now be implemented accordingly.

3. The parties to keep peace.”

The Navakholo Land Disputes Tribunal made the following orders:-

“1. Land No. BUDONGA/BUNYALA/738 be cancelled by the High Court Order and the names of the complainants be replaced as owners.

2. The land Registrar be ordered to register this land into the names of the complainants.

3. The objector to pay all costs of this land case to the complainant.”

The jurisdiction of the Land Disputes is set out in section 3 (1) of the Land Disputes Tribunals Act No. 18 of 1990 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 Tribunal therefore lacked the jurisdiction to cancel any title Deed. The Tribunal therefore acted in excess of jurisdiction and its declaration was a nullity. The Provincial Land Disputes Appeals Committee’s decision to uphold the decision of the Navakholo Land Disputes Tribunal is equally a nullity on this ground alone. The appeal has merits and is allowed. The orders of the Provincial Land Disputes Appeals Committee and that of the Navakholo Land Disputes Tribunal are hereby set aside.

Each party to meet own costs.

Delivered, dated and signed in open court at Kakamega this 21st day of June, 2012

B. THURANIRA JADEN
J U D G E