



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

Civil Appeal 11 of 2011

**ADRIANO AKALA ALUSIOLA ..... APPELLANT**

**VERSUS**

**SAIDI KOKWENYA SINOYA ..... 1ST RESPONDENT**

**PETER MACHINJI MUSEBE ..... 2ND RESPONDENT**

*(An appeal arising from the decision of Kakamega Municipally Civil Case No. 7 of 2010 read on 10.12.10)*

**JUDGMENT**

The Land Disputes Tribunal, Kakamega Municipality in its decision dated 10.12.10 made orders on the ownership of land parcel NO. ISUKHA/LUBAO/683 AND 684.

The appellant was aggrieved by the said award and appealed to this court. The appeal is premised on the following grounds:-

- “1. The Committee erred in that by deliberating and/or entertaining a dispute that was barred by limitation period.
2. That the tribunal was improperly constituted.
3. The tribunal Committee exhibited bias against the appellant.
4. The Committee had no jurisdiction to hear this matter as it involve ownership of land.”

Mr. Ondieki advocate appeared for the appellant while Mr. Atulo Advocate appeared for the respondents. Both parties filed written submissions which I have duly considered.

The jurisdiction of the Land Disputes Tribunal is stipulated in Section 3 of the Land Disputes Tribunals Act No. 18 of 1990 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 Tribunal therefore exceeded its mandate when it made a decision on ownership of land.

The tribunal was comprised of the Chairman and two members. The tribunal was therefore properly constituted as provided for under Section 4 of the Land Disputes Tribunals Act which stipulates as follows:-

***“1. There shall be established a tribunal, to be called the Land Disputes***

***Tribunal, for every registration district***

***2. Each Tribunal shall consist of:-***

***(a) a chairman who shall be appointed from time to time by the District Commissioner from the panel of elders appointed under section 5; and***

***(b) either two or four elders selected by the District Commissioner from a panel of elders appointed under section 5.”***

Was the Tribunal time barred by the Limitations of Actions Act? The Tribunal had no jurisdiction to entertain the claim. The Tribunal’s decision was a ruling void ***ab initio***. It is therefore unnecessary for this court to delve into the proceedings conducted by the Tribunal on whether the claim was time barred or not.

The claim before the Tribunal was on ownership of land. It would have been an exercise in futility to take the Appeal to the Provincial Land Disputes Appeals Committee which also lacked jurisdiction to entertain a claim on ownership of land.

The appeal has merits and is allowed.

***Delivered, dated and signed in open court this 31<sup>st</sup> day of July, 2012***

**B. THURANIRA JADEN**  
**J U D G E**