



REPUBLIC OF KENYA

High Court at Kakamega

Civil Appeal 99 of 2009

DAVID NALUNDI LUSICHE APPELLANT

VERSUS

1. SHABAN LUSICHE ECHESA

2. MARIAM KUNAKA WAMUKOYA RESPONDENTS

(An appeal from the decision of the Western Provincial Land Disputes

Appeals Committee sitting at Kakamega in Land Disputes Appeal

No. 20 of 2006 read to the parties on 14th August, 2009)

JUDGMENT

The appeal herein is premised on the following grounds:-

“1. That the composition of the Appeals Committee was an affront to the law as it consisted of five (5) members instead of three (3) as stipulated by the law.

2. The Western Provincial Appeals Committee erred in failing to find that the Matungu Land Disputes Tribunal had fatally shifted the burden of proof and had failed to find in favour of the appellant yet the appellant had proved his claim.

3. That the Western Provincial Appeals Committee erred in failing to give the appellant ample opportunity to state his case contrary to the rules of natural justice and it erred by dismissing the appellant’s appeal for lack of fresh evidence when none was required as his was an appeal.

4. The Western Provincial Appeals Committee failed to analyse the issues before it critically, wholly and properly or at all and its decision and that of the Matungu Division Land Disputes Tribunal were evidently pre-determined, biased, flawed and indefensible and were arrived at in a cursory and perfunctory manner and are devoid of any sense, justification or reasoning and have resulted in a serious miscarriage of justice.”

The appellant, **DAVID NALUNDI LUSICHE** was the complainant before the Matungu Land Disputes Tribunal. The complaint was against his father the 1st respondent, **SHABAN LUSICHE ECHESA** and the 2nd respondent **MARIAM KUNAKA WAMUKOYA**. The appellant’s case was that in the year 1975, his father the 1st respondent sold the family land consisting of a portion of two acres within land parcel No. **N.WANGA/MATUNGU/71** to the 2nd respondent. According to the appellant, the family of the 1st

respondent was not aware of the sale transaction and was left without a place to settle and occupies ¼ acre portion given to them by their uncle. The complainant wanted the family to be shown where to settle.

The 1st respondent testified before the Tribunal that he gave the land to the 2nd respondent who wanted to buy the same. That the 2nd respondent did not pay the balance of the purchase price and the parties did not obtain the consent of the Land Control Board. According to the 1st respondent he later discovered that the 2nd respondent had transferred the land to herself.

The 2nd respondent's stand is that she purchased two acres of land in the year 1975 from the 1st respondent and started living there and eventually sold it.

Three witnesses who testified, **ANERIKO W. TOME, PHILISTER NZIANE** and **JONATHAN AMUKU** informed the Tribunal of the land dispute. Their evidence was that the 1st respondent sold the land to the 2nd respondent but that the 1st respondent was complaining of non completion of payments. The Tribunal was also informed that there were no boundary features sub-dividing the parcel of land.

The Tribunal's orders were that the complainant's father should show him where to settle in the portion that they remained with in **L.P. NO. N/WANGA/MATUNGU/992**. It was also ordered that a boundary be installed between **L.P. NO. N.WANGA/MATUNGU/992 and 993**.

The Provincial Appeals Committee upheld the decision. The appellant was aggrieved and appealed to this court. Although the Tribunal was within its mandate to entertain a boundary dispute and a claim to occupy land, the sale transaction for the land in question took place in the year 1975. The complaint before the Tribunal was instituted in the year 2005. That is a period of about 30 years. The claim before the Tribunal was therefore time barred.

Section 13 (3) of the Land Disputes Tribunals Act 1990 provides as follows:-

“For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court.”

The appeal at the Provincial level was heard by five members. This contravened the Provisions of Section 8 (5) of the Land Disputes Tribunals Act 1990 which provides as follows:-

“The appeal shall then be determined by the Appeals Committee, which shall consist of three members appointed under section 9.”

Save for the above, the Tribunal was within its mandate in making a determination on which land the appellant should occupy. The appeal is therefore allowed.

Delivered, dated and signed at Kakamega this 11th day of October, 2012

**B. THURANIRA JADEN
JUDGE**