



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Civil Appeal 24 of 2007**

*(Appeal from the decision of the Western Land Appeals Tribunal read to the parties on 22/01/2007*

*in Kakamega Misc. Award No. 112 of 2003)*

**BETWEEN**

**BENEDICTO ANGWEYE LUSICHI.....APPELLANT**

**AND**

**ALFRED SHUMILA MANYONJE.....RESPONDENT**

**JUDGMENT**

The appellant, BENEDICTO ANGWEYE LUSICHI was the complainant before the Ikolomani Division Land Disputes Tribunal and the respondent was ALFRED SHUMILA MANYONJE who is also the respondent herein.

The Tribunal arrived at the following decision:-

***“The Tribunal advised the parties to seek the help of the Government surveyors to identify where Plot 1004 borders Plot No. 1005.”***

The appellant was aggrieved by the said decision and appealed to the Provincial Appeals Committee which made the following orders:-

- “1. The Plaintiff’s prayer fails.
2. Both parties to keep peace.”

The appellant was dissatisfied with the decision by the Appeals Committee and appealed to this court on the following grounds:-

- “1. That the appeals Tribunal was improperly constituted.
2. That the Appeals Tribunal lacked jurisdiction to entertain the claim.
3. That the Appeals Tribunal were biased against the appellant.
4. That the Appeals Tribunal did not give reasons for its decisions.

5. The Award made by the tribunal is manifestly un-just.”

Mr. Kiveu advocate appeared for the appellant while Mr. Momanyi advocate appeared for the respondent. Both parties filed written submissions which this court has duly considered.

The decision by the Appeals Committee was signed by six members contrary to the Provisions of S.9 (2) of the Land Disputes Tribunals Act No. 18 of 1990 which stipulates as follows:-

***“For the purpose of hearing appeals from Tribunals in the Province for which the Committee is constituted the Committee shall sit in a panel of three members and in such a place as may be determined by the Provincial Commissioner.”***

The decision of the Land Disputes Tribunal was on identification of the boundary. This was the decision confirmed by the Appeals Committee. The decision was within the jurisdiction of the Tribunal conferred by 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.”***

If the appellant’s case before the Land Disputes Tribunal concerned a contract of sale, then the Tribunal was the wrong forum. However, the Tribunal’s decision advised the parties to seek help on identification of the boundary. No decision was reached on ownership of the land.

The appeal herein was filed on 8.3.07. The Provincial Appeals Committee’s decision is dated 12.10.06.

Section 8 (9) of the Land Disputes Tribunals Act No. 18 of 1990 provides as follows:-

***“Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:***

***Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved.”***

The appeal herein was filed out of time and without the leave of the court. Consequently, the appeal is struck out with costs to the appellant.

***Dated, delivered and signed at Kakamega this 29<sup>th</sup> day of November, 2012***

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