



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Civil Appeal 54 of 2009**

***(An Appeal from the decision of the Western Provincial Appeals Committee in  
Appeal No. 27 of 2006 arising from Kabras Land Disputes Tribunal  
Case No. 4 of 2005 delivered 25.5.2009)***

**JOEL LUCHELI ..... APPELLANT**

**VERSUS**

**LUSENAKA YUKA ..... RESPONDENT**

**JUDGMENT**

The respondent herein, **LUSENAKA YUKA** had filed a claim against the appellant **JOEL LUCHELI** before the Kabras Division Land Disputes Tribunal,.

The said Tribunal which was comprised of six members “marked the correct boundary” between the two parties.

The appellant was dissatisfied with the said decision and appealed to the Provincial Land Disputes Appeals Tribunal. The Provincial Appeals Committee which was comprised of five members confirmed the decision of the Kabras Land Disputes Tribunal.

The appellant was aggrieved by the said decision and appealed to this court on the following grounds:-

“1. That the Committee erred in law in failing to find that the Kabras Land Disputes Tribunal and the Western Provincial Appeals Committee lacked jurisdiction to entertain the dispute.

2. That the Committee erred in law in failing to find that the Respondent’s claim was statutory time barred.

3. That the proceedings and decision of the Kabras Land Disputes Tribunal failed to comply with the provisions of the Land Dispute Tribunal Act No. 18 of 1990”.

4. That the Appeals Committee erred in law in failing to find that the respondent had no cause of action as against the appellant.”

The firm of Gabriel Fwaya Advocates appeared for the appellant while the firm of Momanyi Advocates

appeared for the respondent. The counsels submitted their written submissions which this court has duly considered.

The Kabras Land Disputes Tribunal was comprised of six members. The said Tribunal was not properly constituted as it violated Section 4 (b) of the Land Disputes Tribunals Act which provides that the tribunal shall consist of the Chairman and either two or four elders.

The Provincial Appeals Land Disputes Tribunal comprised of five members. This violated **Section 8 (5)** of the Land Disputes Tribunals Act which provides as follows:-

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

Section 9 (2) provides:-

***“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 places as may be determined by the Provincial Commissioner.”***

The Tribunals were improperly constituted. The Tribunal’s decision was therefore **null** and **void ab initio**.

This disposes of the appeal herein. The appeal is allowed as prayed. Each party to bear own costs.

***Delivered, dated and signed at Kakamega this 18<sup>th</sup> day of December, 2012.***

**B. THURANIRA JADEN**  
**JUDGE**