



REPUBLIC OF KENYA

High Court at Kakamega

Civil Appeal 98 of 2010

NASHON NANGABO MUNYOKHO..... APPELLANT

VERSUS

NELSON MADANYI IGWEHONA..... RESPONDENT

(An Appeal from the decision of the Provincial Land Disputes

Appeals Tribunal's decision delivered on 22nd day of July 2010

vide Appeal No. 118 of 2007)

JUDGMENT

The respondent herein, **NELSON MADANYI IGWEHONA** filed a claim at the Lurambi Land Disputes Tribunal against the appellant, **NASHON NANGABO MUNYOKHO**.

The Tribunal ruled as follows, *inter alia*:-

- “1. That both parties agree that land sale agreement was Kshs.120,000/=
2. That as from No. 1,2 of our ruling the claimant will get 1 ½ acre piece of land from the objector.”

The dispute ended up at the Provincial Land Disputes Appeals Committee which ruled as follows:-

- “1. The appeal is allowed and the court orders objector Nelson Mudanyi to pay 26,500/= to the appellant Nashon Nangabo Munyakho to finalise their land sale contract within two months w.e.f. the verdict date.
2. The appellant Nashon Nangabo Munyakho to transfer 2 acres of land he sold to Objector Nelson Mudanyi Igwehona from land parcel No. BUTSOTSO/INGOTSE/ 1700 within two months w.e.f. the verdict date.
3. The parties to share costs.
4. The parties to maintain peace.”

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

“1. The Provincial Land Disputes Tribunal failed to appreciate that the Tribunals had no jurisdiction to deal with title to land.

2. The Provincial Land Disputes Appeals Tribunal erred in enforcing a contract that was void and unenforceable in law.

3. The Provincial Land Dispute Appeals Tribunal erred in law and on facts presented in finding for the respondent herein who was in breach of the contract, if any as he failed to clear the purchase price in full and on time.”

The Tribunal’s decision was on enforcement of contractual obligation and transfer of title to land.

The Tribunal violated the mandate as provided under S.3 (1) 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.”

Consequently, the Tribunal acted **ultra vires** and the decision was **null** and **void**.

The appeal is allowed. Both the decision of the Lurambi Land Disputes Tribunal and the Provincial Land Disputes Tribunal are hereby set aside. Each party to bear own costs.

Delivered, dated and signed at Kakamega this 18th day of December, 2012

B. THURANIRA JADEN
JUDGE