



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL APPEAL NO. 61 OF 2008**

**PATRICK MAYOTI**  
**SHIBOKO.....APPELLANT**

**V E R S U S**

**NICHOLAS MITALO**  
**LISECHE.....RESPONDENT**

**J U D G M E N T**

1. The dispute between the parties herein begun at the Shinyalu Land Disputes Tribunal in its case no. 7/2006. The claimant was the present Appellant while the objector was the present Respondent.
2. In its award dated 20.12.2006, the Tribunal decided as follows;
  - (a) *“That one Nicholas Mitalo Liseche has been working on the parcel of land no. ISUKHA/SHITOTO/580 since 1996 prior to buying and thereafter to date uninterruptedly.*
  - (b) *That in accordance with the exhibits nos. 1-3 dated 14/6/2002 + 16/4/02 one Nicholas Mitalo Liseche duly purchased the parcel of land no. ISUKHA/SHITOTO/580 from Lawrence Mayoti Liyenzelo.*
  - (c) *That one Patrick Mayoti Shiboko was aware of the sale of the whole of the parcel of land ISUKHA/SHITOTO/580 by one Lawrence Mayoti Liyenzelo to one Nicholas Mitalo Liseche.*
  - (d) *That despite our notices of attendance dated 1/11/2006 and 6/12/2006 to one Patrick Mayoti Shiboko duly served on him ..... he never bothered to comply.*
  - (e) *That we therefore order the Kakamega District Land Registrar to cause the transfer of the parcel of land no. ISUKHA/SHITOTO/580 from one Patrick Mayoti Shiboko to one Nicholas Mitalo Liseche*

*forthwith.*”

3. The said award was then taken to the Chief Magistrate’s Court for adoption under Section 7(2) of the Land Disputes Tribunals Act No. 18 of 1990 which provides as follows;

“S.7(1) .....

***(2) The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforced in the manner provided for under the Civil Procedure Act.”***

4. On 12.2.2007, the decision was read in open court and it became a decision of the court under the above section on 1.6.2007.

5. Subsequently, the Appellant filed an Application dated 9.11.2007 seeking a review of the decision for reasons inter-alia that it was a nullity for want of jurisdiction and in a Ruling dated 11.8.2008, the subordinate court rendered itself as follows;

***“Application dated 9.11.2007 came up for hearing on 14.4.2008. The application was brought under order 44 rule 1 of the Civil Procedure Rules. Miss Shinyanda for the applicant and Mr. Mukavale for respondent argued and opposed the application respectively. This court had considered the submissions by both parties. The orders sought by the applicants cannot be issued by this court because they are Judicial Review in nature. The grounds of the application for review was inter alia; the composition of the tribunal. These are issues which can only be ventilated by the High Court while sitting as a Judicial Review court. The orders sought and the grounds adduced do not comply with the provisions of Order XLIV Rule 1. The court lacks jurisdiction to investigate the validity or not of a tribunal case. The Land Disputes Tribunal Act. For this reasons therefore the application is dismissed with costs.”***

6. The Appellant was dissatisfied with the above decision and in the Memorandum of Appeal dated 14.8.2008, he raised the following grounds;

a. ***“That the learned magistrate erred in law in failing to address his mind to the law and facts before he delivered his ruling.***

b. ***That the issue before the learned magistrate involved land and the issue of the validity of the award that had been adopted was a fairly weighty issue which deserved more serious treatment than the one accorded during the hearing of the application for review.***

c. ***That the learned magistrate erred in law and fact in considering that the trial court had no jurisdiction to entertain and determine the application for review.***

d. ***That the learned magistrate misdirected himself in law in finding that the subordinate court’s duty was only to adopt any award, even where the alleged award was NOT an award known to law.***

***e. That the learned magistrate erred in law is not considering the appellants case at all.”***

7. Having read the precise written submissions by the Advocates for the parties, it is clear to me that the Appeal is completely misguided for the following reasons;

8. Firstly, the subordinate court by dint of section 7(2) of the Act had no jurisdiction to inquire into the validity of the award before it. Its role is to adopt it for purposes of enforcement and execution only.

9. Secondly, any party dissatisfied with the decision has a right of appeal on both matters of law and fact to the Provincial Appeals Committee, and thence to the High Court on matters of law only. Jurisdiction is a matter of law and could only have been raised before any of the two organs and not the subordinate court.

10. Thirdly, the advocate for the Appellant has relied on the decision of Nyamu J. (as he then was) in R vs Kajiado Land Disputes Tribunal & Another (Nai H.C. Misc. Appl. No.689/2001) and that of Mitey J. in John Musamia Ramadhan vs Ali Wasaho (Bungoma H.C. Misc. Appl. No.168/2002). Both these decisions were rendered after the filing of judicial review proceedings challenging the decision of the Tribunal for want of jurisdiction. They have no relevance to the present instance.

11. The option of judicial review proceedings was available to the Appellant and the jurisdiction to make orders in that regard is conferred only in the High Court under Order 53 of the Civil Procedure Rules.

12. In the end, the Ruling of the subordinate court was sound and the Appeal has no merit and is best dismissed with costs to the Respondent.

13. Orders accordingly.

***Delivered, dated and signed at Kakamega this 14<sup>th</sup> day of April, 2011.***

**ISAAC LENAOLA**

**J U D G E**