



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL NO. 77 OF 2008

PAULO NDALUSIA SASALA.....APPELLANT

V E R S U S

JACOB NYIKULI MUKARAMOJA.....RESPONDENT

J U D G M E N T

The appellant was aggrieved by the decision of the Senior Resident Magistrate at Butali who refused to adopt an award which had been made in his favour by the Provincial Land Disputes Appeals Committee. The appellant had sought to have the said award adopted by the Butali SRM Court in **Misc. Application No.3 of 2007**. The Senior Resident Magistrate, in a lengthy ruling delivered on 4th September 2008, refused to adopt the award and in fact proceeded to dismiss the said application seeking the adoption of the said award. In his memorandum of appeal, the appellant raised four grounds of appeal challenging the said decision of the subordinate court. He was aggrieved that the trial magistrate had purported to analyse the decision of the Provincial Land Disputes Appeals Committee when in actual fact he did not have such jurisdiction. He faulted the trial magistrate for failing to perform his duty by adopting the award as required by law. He urged the court to allow the appeal and make an appropriate decision setting aside the said decision by the Senior Resident Magistrate.

During the hearing of the appeal, this court heard oral submissions made by Mr. Manyoni on behalf of appellant. The court allowed the appellant to proceed with the appeal after it established that the date that the appeal was scheduled to heard had been fixed by the court in the presence of the appellant and the respondent. Learned counsel basically reiterated the contents of the memorandum of appeal. He submitted that the learned magistrate erred in law when he refused to adopt the award when the law requires him to do so and accordingly enter judgment. He stated that the subordinate court had no jurisdiction to examine or analyse the judgment with a view to determining its legality or otherwise. He therefore urged the court to allow the appeal and set aside the said decision of the subordinate court.

This court has carefully considered the argument advanced by counsel for the appellant in favour of the appeal. The preamble of the **Land Disputes Tribunal Act** provides as follows:

“An Act of Parliament to limit the jurisdiction of magistrates’ courts in certain cases relating to land; to establish Land Disputes Tribunals and define their jurisdiction and powers and for connected purposes.”

Section 3(1) of the said **Act** sets out the jurisdiction of the Land Disputes Tribunal. The Tribunal is vested with the jurisdiction, inter alia, to hear disputes of civil nature concerning the division of, or the determination of boundaries to land, including land held in common. In the present appeal, the appellant had lodged a case before the Kabras Land Disputes Tribunal claiming 2 acres from a parcel of land registered as No. South Kabras/Chemuche/917. The said Tribunal found in favour of the appellant. The respondent was aggrieved by the decision and duly appealed to the Western Provincial Land Disputes Appeals Committee. The Appeals Committee upheld the decision of the Kabras Land Disputes Tribunal. The appellant presented the two decisions before the Butali Senior Resident Magistrate’s court for the purpose of having them adopted as the judgment of the court. It is these two awards that the Senior Resident Magistrate refused to adopt claiming, inter alia, that the Land Disputes Tribunal did not have jurisdiction to make the award because of the manner in which the panel of elders was constituted.

What is the law in regard to the role of a magistrate’s court when a decision of the Tribunal is filed in such court for adoption? **Section 7** of the **Land Disputes Tribunal Act** provides as follows:

“(1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the magistrate’s court together with any depositions or documents which have been taken or proven before the Tribunal.

(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 enforceable in the manner provided under the Civil Procedure Act.”

It is clear from the foregoing Section, that the duty of a magistrate’s court is limited to entering judgment in accordance with the decision of the Tribunal. The court is required to enter such judgment and issue a decree. The magistrate’s court has no mandate to make an inquiry as to the validity or otherwise of the decision of the Tribunal. That jurisdiction is left to the High Court either under an application for Judicial Review or on appeal from the decision of the Provincial Land Dispute Appeals Committee. By purporting to analyse the decision and render a ruling in regard to whether or not to adopt the decision of the Land Disputes Tribunal which had been affirmed by the Provincial Land Disputes Appeals Committee, the learned Senior Resident Magistrate was exercising a jurisdiction that he did not have. In fact, the learned Senior Resident Magistrate acted in breach of the Land Disputes Tribunal Act that limits his jurisdiction and bars him from hearing and determining cases that are in the exclusive mandate of the Land Disputes Tribunal. The role of the magistrate’s court when a party seeks to have an award of the Land Disputes Tribunal adopted can be said to be an administrative duty. It does not require the magistrate to examine or analyse the award with a view to determining whether or not it fulfils certain legal criteria for the same to be adopted as the judgment of the court.

It is clear from the foregoing reasons that the appeal filed by the appellant has merit and shall be allowed. The decision of the Senior Resident Magistrate made on 4th September, 2008 dismissing the application in which the appellant had sought to adopt the award made by the Kabras Land Disputes Tribunal and which was confirmed by the Western Provincial Land Disputes Appeal Committee is hereby set aside. The appellant shall be at liberty to appear before the same court so that the said award may be adopted as a judgment of the court as provided under **Section 7(2)** of the **Land Disputes Tribunal Act**. The appellant shall have the costs of this appeal.

DATED AT KAKAMEGA THIS 23RD DAY OF JUNE 2011

L. KIMARU

JUDGE