



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL NO.93 OF 2008

YAKOBET NECHESA WABUKO.....APPELLANT
VERSUS
HUMPHREY OLWISI MURANDA.....RESPONDENT

J U D G M E N T

1. This appeal raises only one issue for this court's determination; whether a magistrate's court can decline to adopt an award made by a Land Disputes Tribunal under Section 7(2) of the Land Disputes Act. That section provides as follows;

“The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall be enforceable in the manner provided for under the Civil Procedure Act”.

2. The Appeal is against a Ruling by Hon. P. O. Ooko, RM delivered on 24th October 2008 in which he dismissed an application to adopt the award of the Butere Land Disputes Tribunal in its Case No.8 of 2001. His reasons for doing so were captured in the penultimate paragraph of his ruling where he rendered himself thus;

“In the whole, however, I do find that it is not in dispute that title deed of the land parcel No.Maram/Shianda/126 had already been transferred to one Everlyne Omusinde Omungo as the registered owner thereto pursuant of the Registered Land Act Cap.300 of the Laws of Kenya instead of the respondent herein (sic). Going by the award of the tribunal, the title which was to be cancelled was the one held by the respondent, Humphrey Olwisi Muranda. It was not any other holder of the aforesaid land title deed to be cancelled but the one specifically held by the Respondent. In as much as I sympathies(sic) with the applicant, this application in my view had been overtaken by events. Even if the same was to be allowed and the award adopted as prayed herein, I wonder how the same would have been enforced as a decree of this Honourable Court. And since court orders are always not issued in vain, I find no merit at all in the application dated 7th day of July 2008 and hereby dismiss the same with costs.”

3. The appellant's case is that the learned magistrate's role was limited to adopting the award and not to purport to interpret it but the Respondent's argument in response is that the Application for adoption of the award was worded in different terms than the award and therefore it would have been reckless of the court to grant orders that were never granted by the Tribunal.

4. I have read the record of the subordinate court and the award of the Tribunal. The Tribunal's “opinion” was as follows;

(a) “From the evidence given and the fact that the Defendant’s father on his return from Bungoma never went back to settle on his original land, it is enough proof that he had actually sold land to Moses Wabuko who in turn had build a house for his son on this land.

(b)The court accepts that the procedure and process in transferring land in dispute was conducted properly (through the Land Control Board).

(c) The court therefore recommends that the land Title Deed held by the Defendant Humphrey Muranda be nullified and the new title Deed be issued to the plaintiff Yakobet Nechesa Wabuko as the owner of Marama/Shianda/126.

(d)And that if there is any contracted sugar cane on this land, the cane proceeds should belong to the plaintiff.

(e)The Defendant be held responsible for any damage cause to the house and any other property of the plaintiff and to pay for the court costs accordingly.”

5. On appeal against the above decision, the Western Provincial Appeals Committee in case no.26 of 2002 ordered as follows;

(a) “Land is given to respondent – Yakobet Nechesa Wabuko to be issued with new Title Deed.

(b)Title Deed now held by appellant – Mr. Humphrey Muranda be nullified.

(c) Appellant held responsible for damage caused to property of respondent and to pay for the costs of this case.”

6. On 19th July 2008, the Appellant filed an Application to adopt the award of the Butere Land Disputes Tribunal but added two more prayers;

(I) that the proceeds from Block 6 plot No.126 Account No.51896 – Mumias Sugar Co. Limited be paid to him.

(II) that the transfer, effected on 24th January 2006, of land parcel No.Marama/Shianda/126 by the Respondent to Everlyne Omusinde Umungo, his wife, be cancelled.

I should note here that there were other proceedings before the High Court and Court of Appeal but having read the decisions in High Court Civil Appeal No.55 of 2002 and Civil Appeal No.44 of 2006 (Kisumu), they do not affect the determination of the single question that I have posed above.

7. In any event, I have elsewhere above reproduced Section 7(2) of the Act and although I know that the High Court has taken different positions on the role of the magistrate’s court, I am clear in my mind that the mandate of that court is very limited. It is limited to adopting the award of the Tribunal for purposes of execution under the Civil procedure Act. It has no mandate to purport to sit on appeal over the award; a role granted to the Provincial Appeals Committee and thereafter the High Court. It cannot even purport to interpret the award as to its legality enforceability or otherwise. If that were so, the statute would have stated as much and it has not.

8. Granted, the Application for adoption of the award sought orders that were outside the mandate of the subordinate court and I have set them out above. The simple thing for the court to have done was to strike them out and proceed to adopt the award. But what did the court do? it purported to determine matters that no law mandate it to, including the status of the land at the time. It had no jurisdiction to do so.

9. While allowing the appeal for the above reasons, I will order that the award in Butere Land Dispute Tribunal Case No.8 of 2001 be taken back to the subordinate court for adoption, only, and thereafter the

Appellant may determine how to ensure that the land reverts back to either the Respondent or directly to himself.

10. The Appeal is determined in these terms and parties shall bear their own costs as none is to blame for their present predicament.

11. Orders accordingly.

**I. LENAOLA
JUDGE**

**DELIVERED, DATED AND COUNTER-SIGNED BY L. KIMARU JUDGE AT KAKAMEGA
THIS 13TH DAY OF JUNE, 2011**

**L. KIMARU
JUDGE**