



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CIVIL APPEAL NO.2 OF 2009

NICHOLAS MAYERI OKOMBO.....APPELLANT

=VERSES=

ANNE OLAWO KIMARU.....RESPONDENT

**[From decree and order of Western Provincial Land Disputes Appeals Committee in Committee
Appeal Case No.84 of 2008]**

JUDGEMENT

The facts preceding this appeal to the extent this court understand them as follows:-

The respondent has commenced proceedings at Busia Municipality Land Dispute Tribunal (in case No.12 of 2008). She claimed a substantive beneficial interest in L.R No.Bukhayo/Mundika/1852 which she claimed had been purchased by her late husband, James Kimaru before he died in 1988. However, she lost her claim before Tribunal .

The respondent being dissatisfied with the ruling, appealed to the Western Provincial Land Disputes Tribunal Appeals Committee in Case No.89 of 2008. The Committee, reversing of the Busia Land Dispute Tribunal made the following findings:-

- 1. That the appeal succeeds.**
- 2. That the appellant Anne Olawo Okonda is awarded 0.5 Ha from parcel No. Bukhayo/Mundika/1852**
- 3. That the balance of the parcel of the said land, would be shared between the Nicholas Okombo and his brother - in – Law.**
- 4. That parcel No. 6797 and 6798 were to be canceled and original parcel from which they were sub divided i.e. L.R.No. Bukhayo/ Mundika/ 1852, be reinstated for fresh sub division as ordered above.**
- 5. That executive officer of the court do execute the relevant transfer and other documents incase the respondent refused to sign them.**

In this appeal , parties agreed to proceed through written submissions . The appellant filed such submissions as ordered but the respondent later indicated that she saw no need to file the submissions.

I have considered the appeal after perusing all the record. It is clear from the proper reading of the Western Provincial Land Disputes Appeal Committees Judgment or findings, that it delved into issues relating to substantive beneficial interest in the land known as Bukhayo/ Mundika/ 1832 and its two

subdivisions No.6797 and 6798.

That is so because the Committee purported to the order:-

1. a subdivision of the parcel
2. a cancellation of title
3. a purported withdrawal or derogation of a citizen's right to protect his property by purporting to give his power to transfer the property to the Executive Officer of the court.

In this courts view, the Appeal Committee had no such powers under section 3(1) of the Land Disputes Tribunal Act, Act No. 18 of 1990.It accordingly acted ultra vires its powers, and its findings cannot be left to stand.

The upshot is that this appeal has merit and must succeed. The appeal is allowed, and the Findings of the Western Provincial Land Disputes Appeals Committee under the Committee Case No. 89 of 2008 is hereby set aside. Costs are to the appellant here and below. Orders accordingly.

Dated and delivered at Busia on the 24th day of August 2011.

D.A ONYANCHA
JUDGE.