



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUNGOMA

CIVIL APPEAL NO.33 OF 2009

BENJAMIN LUBEKHOAPPELLANT

VERSUS

MARTIN WABWILE SIRABU

ANTONINA NASIMIYURESPONDENT

**(From the decree and order of Western Provincial
Land Appeals Committee in Bungoma CMCC LTD
Case No.57 of 2007).**

J U D G E M E N T

This appeal as this court understands it, arises from a dispute over Land Parcel No. West Bukusu/S. Mateka/786. The Respondents Martin Wabwile Sirabu and Antonina Nasimiyu, filed a land dispute before Bumula Land Disputes Tribunal against their relative, Benjamin Lubakho, seeking a subdivision of the land. The tribunal went ahead to subdivide the piece of land and gave 3 acres to the respondents. The appellant who however was aggrieved, of that decision, appealed to the Kakamega Provincial Land Appeals Committee against the sub division.

The result was that the Appeals Committee upheld the decision of the Butula Land Disputes Tribunal's decision and also held that if the appellant finally refused and/or failed to sign or execute the subdivisional documents, a court Executive Officer should do it.

The appellant was again aggrieved and filed this appeal to this court against the Committee's decision on 7.7.2009. The appellants main rounds of appeal include-

- (a) That the Bumula Land Disputes Tribunal lacked power and jurisdiction to entertain the said land dispute and that therefore its decision and the decision of the Western Provincial Land Appeals Committee, to subdivide the land was null and void.**
- (b) That in so far as the Bumula Land Disputes Tribunal embarked to enforce a contractual agreement which had been entered into and executed 1991, the transaction had been timebarred and inexecutable.**
- © That the Respondents filed the suit before Bumala Land Disputes Tribunal without capacity to do so in so far as they tried to enforce rights due to their deceased father without themselves acquiring or obtaining a Grant of Letters of Administration.**

The Respondents meanwhile, raised an important issue of jurisdiction arising from the allegation that this appeal was filed outside the 60 days granted to a party to appeal to this court from the date of the decision of the Provincial Land Appeals Committee. The respondent asserted that while the Provincial Land Appeals Committee made and dated its decision on 13.11.2008, the appellant did not appeal from it until 144 days afterwards. The law according to the relevant Act of Parliament, gave him only 60 days within which to file an appeal. They accordingly termed the appeal fatally incompetent and sought that it be struck out.

The court accordingly decided to deal with the competency of the appeal first. Clearly, if what the Respondents raised is correct, then it will render this appeal incompetent and liable to striking out at this early STAGE.

I have carefully perused the appeal record which carries all the relevant documents. It confirms the fact that the Provincial Land Appeals Tribunal Verdict, was signed by five Committee members on 13.11.2008. There is no indication that the award was ever read to the parties concerned. However by an application dated 6.1.2009 before the Senior Resident Magistrate, the said Verdict was read to the parties on the 25.3.2009 by virtue of the Ruling of court to do so, of the same day.

It is clear to me accordingly, that while the Provincial Land Appeals Committee was made and signed on 13.11.2008, it was not read and delivered until the 25.3.2009 when accordingly, the prescribed time of 60 days within which to appeal, did begin to run. This also means that this appeal which was filed on 7.4.2009, was filed within the 60 days prescribed by the relevant Act.

I turn now to the grounds of appeal earlier highlighted. First, there is no doubt that the Bumula Land Disputes Tribunal in its award, subdivided the land parcel No.W. Bukusu/S. Mateka/786 into two, with 3 acres of the same being given to the respondents. That would also mean that the original title of the said land would be destroyed and two new titles would be created. In my view that would amount to the Tribunal entertaining and finally interfering with the substantive beneficial interest of a properly registered land not authorized under the Act which created and empowered the Land Disputes Tribunal and its appellate Committee. Indeed, that would be the ultimate effect of implementing the Tribunal and the Committees award and verdict, respectively. As held by the Kenya Court of Appeal in Civil Appeal No.256 of 2006, **Jotham Amunavi v. Chairman Sabatia Division Land Disputes Tribunal & another**

“The implementation of the decision of the Tribunal entails the subdivision of the suitland into two parcels and opening a register in respect of each subdivision and thereafter the transfer of the subdivision of half acre to Kenyani (see Section 89 of RLA). It is clear that the proceedings before the Tribunal related both to title to land and to beneficial interest in the suitland. Such dispute is not, in our view within the provisions of Section 3(1) of the Land Disputes Tribunal Act. By Section 159 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrate’s Court in Court in cases where such, latter court has jurisdiction.”

Secondly, the Bumula Land Disputes Tribunal in this case attempted to effect a sale agreement or contract completed in 1991. In this court’s view the sale agreement was not only time-barred since it was beyond 12 year old, but once more the Tribunal had no such jurisdiction under Section 3(1) of the relevant Act.

The third ground of appeal was that the Respondents had no legal capacity to present the case before the Tribunal since they held no grant of Letters of Administration to their deceased father’s estate. It was necessary for them to show that they had such capacity. They did not do so then, and even thereafter. I agree that without a grant of Letters of Administration, the respondents had no legal capacity to file and prosecute the case.

For the above reasons, individually and jointly, this appeal has merit. This court hereby quashes and sets aside not only the Verdict of the Western Provincial Land Appeals Committee delivered on the 25.3.2009 but also the Award of the Bumula Land Disputes Tribunal relating to Land Parcel No. W. Bukusu/S. Mateka/786. This judgement does not affect rights of parties, if any, under any other law.

Orders accordingly.

Dated and delivered at Bungoma this 11th day of October 2011.

D.A. ONYANCHA
J U D G E