



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL NO. 112 OF 2010

JOHN MARENDE OKURA APPELLANT

VERSUS

MOHAMMED MAKOKHA RESPONDENT

JUDGMENT

The Appellant, **JOHN MARENDE OKURA**, being dissatisfied with the decision of the Western Provincial Land Disputes Appeals Committee (hereinafter Appeals Committee) delivered on 22.7.2010 in Appeal No. 127/09 has appealed to the Court on the following grounds:

1. That the Tribunal was improperly constituted as it offended the mandatory provisions of S. 8(5) of the Land District Tribunal Act.
2. That the Tribunal erred in law in failing to give reasons for its finding contrary to section 8 (7) of the Land Disputes Tribunal Act.
3. That the Tribunal erred in upholding the Matungu Land Disputes Tribunal decision when the said decision offended the Provisions of Section 8 (3) of the Land Disputes Tribunal Act.
4. That the Tribunal erred in giving audience to the Respondent when he had no **Lucus Standi** as he had not obtained Grant of Letters of Administration.
5. That the Tribunal erred in law in upholding the Matungu Land Disputes Tribunal's decision when it was evidently clear that it was not properly constituted.
6. That the Tribunal erred in upholding the decision of Matungu Land Disputes Tribunal when decision was biased and against the Weight of the evidence.

During the Appeal, the appellant appeared in person and relied on his memorandum of appeal. The Respondent also appeared in person and stood by the decision of the Tribunal

I have read the Proceedings before the Appeals Committee. The decision was made by three members. The panel was properly constituted in terms of Section 8 (5) and Section 9 (2) of the Land Disputes Tribunal Act.

The decision of the Matungu Land Disputes Tribunal Act dated 24.11.2009 was made by five members. The panel was therefore properly constituted in accordance with Section 4 (1) of the Land

Disputes Tribunal Act.

The decision of the Matungu Land Disputes Tribunal which was upheld by the Appeals Committee ordered the appellant to transfer ½ an acre of land to the Respondent. This is a decision on ownership and transfer. The decision contravenes Section 3 (1) of the Land Disputes Tribunal Act which provides as follows:-

“ subject to this Act, all cases of a Civil nature involving a dispute as to:

(a) The division of or the determination of boundaries to land, including land held in common.

(b) A claim to occupy or work land; or

(c) Trespass to land

Shall be heard and determined by a tribunal established under section 4”

The question of ownership and transfer of Land is outside the powers conferred on the Tribunal by Section 3 (1) Land Disputes Tribunal Act.

The Appeal has merit and is allowed. The decision of the Western Provincial Land Disputes Appeals Committee and the Matungu Land Disputes Tribunal relating to land parcel No. N/Wanga/Lunganyiro/722 are both set aside.

Each party to bear its own costs.

Orders accordingly.

Delivered, dated and signed in open court this 8th December, 2011.

B. THURANIRA JADEN
J U D G E