



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL NO. 16 OF 2010

SULEIMAN AMUKOYA SHIKHAYA.....APPELLANT

VERSUS

SHABAN TABU SHIKHAYA.....RESPONDENT

J U D G M E N T

1. This appeal arises from the decision and award of the Provincial Land Disputes Appeals Tribunal Western Province, delivered on 10th December, 2009 in Appeal No. 45 of 2009.
2. The appeal is premised on the grounds:-
 - (i) That the Provincial Land Disputes Tribunal erred in law in dismissing the applicants appeal and upholding the decision of the Mumias Land Disputes Tribunal.
 - (ii) That the Provincial Land Disputes Tribunal erred in law in upholding the decision of Mumias Land Disputes Tribunal when the same was *ultra vires*.
 - (iii) That the Provincial Land Disputes Tribunal erred in law in upholding a decision that was made without jurisdiction and without application of the requisite principles of law.
3. Mr. Musiega, Counsel for the Appellant argued all the three grounds of the appeal together. He argued that the Tribunal ordered that the land be subdivided and one acre transferred to the Respondent. That this presupposes cancellation of title to the land. That the father to the parties herein had since passed on and therefore the Tribunal was dealing with a Succession matter. That the disputed land is a first registration under the Registered Land Act (RLA) and the Tribunal therefore did not have jurisdiction to deal with it.
3. The Respondent did not attend court during the hearing of the appeal. The court was satisfied that the Respondent was duly served and proceeded to hear the appeal.
4. The decision made by the Provincial Land Disputes Appeals Tribunal Committee upheld the decision by the Mumias Land Disputes Tribunal. The Mumias Land Disputes Tribunal ordered as follows:-

“..... The claimant is awarded one acre of land where his house stands. It further ordered that the disputed land was to be sub-divided accordingly.”

5. The subdivision of the land and the transfer of one acre of the same is clearly outside the powers conferred on the Tribunal under the Land Disputes Tribunal Act which stipulates 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.”

6. What was before the tribunal for determination was the issue of validity of the title held by the appellant. It is a matter that ought to have been dealt with as provided for under S. 159 of the Registered Land Act (RLA).

7. The Mumias Land Disputes Tribunal and the Appeals Committee had no jurisdiction to determine the dispute.

9. The appeal has merit and is allowed. The decision of Mumias Land Disputes Tribunal No. 2/2009 and the Western Provincial Appeals Committee No. 45/09 regarding Title No. SOUTH WANGA/EKERO/2491 are both set aside.

10. Each party to bear its own costs.

11. Orders accordingly.

Delivered, dated and signed in open court on the 8th day of December, 2011.

B. THURANIRA JADEN
J U D G E