



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU**

Civil Appeal 113 of 2008

**MOSES JUMA ORICHO 1ST APPELLANT
PHILISTER JUMA ORICHO 2ND APPELLANT**

-VERSUS-

SEPHANIA OTIENDE ABONGO RESPONDENT

Coram:

Ali-Aroni, Judge.

Mr. Aringo Advocate for the Appellants

Respondent present in person

Mr. George Diang'a Court Clerk.

JUDGMENT

Before the court is an appeal from the award of the Land Dispute Appeals Committee in Land Case No. 026 of 2007 which was adopted as a judgment of the court by Hon. Omwansa, Resident Magistrate on 6/10/2008 in Chief Magistrates Court Land Case No. 38 of 2008.

The appellants MOSES JUMA ORICHO and PHILISTER JUMA ORICHO were original claimants in Land Tribunal Case No. 33 of 2006. They initiated the process at the Kisumu/East/West Land Dispute Tribunal. The tribunal found for the claimants.

Being aggrieved by the award, the respondent SEPHANIA OTIENDE ABONYO appealed to the Provincial Land Dispute Appeal Committee who awarded the land to the respondent SEPHANIA OTIENDE ABONYO and set aside the award of the Land Dispute Tribunal. The said SEPHANIA OTIENDE moved the court - Chief Magistrate's Court in Land case no. 38 of 2008 and the award was adopted as judgment of the court on 6th October, 2008.

The appellants were aggrieved by the award and filed an appeal on the following grounds.

1. That the Appeals Committee had no jurisdiction to arbitrate over title to the registered land.
2. That the Appeal Committee acted in excess of jurisdiction in entertaining a matter relating to beneficial ownership of land.
3. That the entire proceedings and findings of the Appeals Committee were fraudulent and a total violation of the principles of natural justice.

The appeal was opposed by the respondent who appeared in person. Mr. Aringo Advocate appeared for the appellants.

Appellants' submissions.

At the hearing, counsel for the appellants abandoned ground 3 of the grounds set out in the memorandum of appeal. It was submitted on behalf of the appellants that the matter before the Appeals Committee related to both beneficial interest and ownership, that being the case, the matter did not fall within the jurisdiction of the Land Dispute Tribunal. Mr. Aringo S. 3 (1) of the Land Disputed Tribunal Act No. 18 of 1990. He also contended that the Appeals Committee acted contrary to the evidence Act by allowing new evidence at the appeal level.

Respondent's submissions.

The respondent contended that the certificate of delay forming part of the record was neither signed nor certified and that the appeal was filed out of time.

The respondent also contended that the Appeals Committee acted within its mandate. Further that the appellants initiated proceedings under the Lands Dispute Tribunal and ought not to challenge its jurisdiction upon losing the case.

I have considered the submissions made by counsel for the Appellants and the Respondent. The issues for determination are: - whether the Appeals Committee acted outside its jurisdiction and whether the appellants can question the jurisdiction of the process having submitted to the same.

Analysis and Conclusion

Section 3(1) of the Land Disputes Tribunal Act No. 18 sets out the Limitation of Jurisdiction of the tribunal as follows:

"3(1) subject to Limitation 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 on land, or
- c) trespass to land."

In the land dispute tribunal, the 2nd appellant stated in part as:

"I have sued Sephania Otiende because he has registered my land in his name."

The Appeals Committee did not summarize issues however, in their findings they stated in part that the land was registered in the name of the appellant in 1981 and he has utilized it until 2006 without objection.

It is clear from the above that the Land Dispute Tribunal and the Appeals Committee were called upon to adjudicate the issue of title and issuance of title deed to the respondent. The question is whether this was within their mandate.

Section 159 of the Registered Land Act Cap 300 of the Laws of Kenya provides:

“ Civil suits and proceedings relating to the title to, or the possession of land, or to the time to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be filed in the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, in the Resident Magistrate’s Court, or, where the disputes within the provisions of part IIIA of the Magistrates’ Courts Act, in accordance with law.”

From the above sections of the Law, the Land Dispute Tribunal had no jurisdiction to adjudicate on the issue of title and ownership, likewise the Appeals Committee, which therefore means that they acted in excess of jurisdiction and therefore the proceedings and award are voidabinitio.

Are the appellants bound by the decision as they initiated the proceedings? The appellants were acting in person in both the Tribunal and the Appeals Committee so did the respondent, who continues to act in person. The Court appreciates their limitation in regard to the issue of jurisdiction.

Since the proceedings and award are void abinitio for lack of jurisdiction the same cannot be binding on the appellants.

On whether the appeal was filed within time, Section 8(a) of Act No. 18 of 1990 allows 60 days within which an appeal be filed in the High Court.

For the above reasons, I allow the appeal and set aside the proceedings and award by the Land Dispute Tribunal and the Appeals Committee.

Dated and delivered in Kisumu on 26.02.2010.

ALI-ARONI
JUDGE

In the presence of:

..... present for Appellant

.....present for Respondent

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