



**Mukosi v Shikutu (Environment and Land Appeal E001 of 2021)
[2022] KEELC 4795 (KLR) (20 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 4795 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E001 OF 2021
DO OHUNGO, J
SEPTEMBER 20, 2022**

BETWEEN

ALFRED CHIKONE MUKOSI APPELLANT

AND

JAMES ANANGWE SHIKUTU RESPONDENT

*(Being an appeal from the decision of the Kakamega Land Disputes
Provincial Appeals Committee delivered in Appeal Case No 47
of 2001 James Anangwe Shikbutu v Alfred Chikone Mukosi)*

JUDGMENT

1. This appeal was filed in the High Court on August 12, 2002. It remained dormant in that court and was dismissed for want of prosecution on July 7, 2015. The appellant later passed away on January 7, 2018. Okwako Thomas Mukosi obtained limited grant of letters of administration ad litem in respect of the appellant's estate in Butere SRM Succession Cause No 202 of 2020 and filed an application seeking setting aside of the dismissal and an order that he substitutes the appellant. The High Court allowed the application on January 27, 2021 and simultaneously ordered transfer of the appeal to this court. There was however no amendment of the memorandum of appeal to reflect the substitution.
2. It is stated on the face of the memorandum of appeal that the appeal is against a decision of the Kakamega provincial appeals committee delivered on July 4, 2002. I have however not been able to locate in the record of appeal any entry concerning the date of delivery. Instead, what I see is that the Provincial Appeals Committee delivered its decision on August 30, 2001.
3. The grounds of appeal as listed in the memorandum of appeal are as follows:
 1. That the proceedings held contravened the mandatory provisions of the governing Act and as such the same was unnullity (sic).



2. That the said tribunal erred in entertaining the purported (sic) appeal as there was no appeal properly instituted within the meaning of the *Land Disputes Act*.
3. That the purported (sic) appeal contravened the principles of natural justice and as such its decision is null and void.
4. Based on the above reasons, the appellant prayed that the appeal be allowed, and the decision of the Provincial Appeals Committee be set aside.
5. The appeal was canvassed through written submissions. The appellant argued that the provincial appeals committee erred in law by not addressing the issue of whether he was entitled to the 5 acres of land awarded by the Butere Land Disputes Tribunal. He referred the court to section 3 of the *Land Disputes Tribunals Act*, 1990 (repealed) and further argued that the Butere Land Disputes Tribunal acted within its jurisdiction. He therefore urged the court to allow the appeal.
6. The respondent's submissions were comprised in a document titled "replying affidavit". The document, which is not made on oath, is really not submissions but an attempt to give the respondent's version of facts.
7. I have considered the grounds of appeal and the parties' submissions. A perusal of the record of appeal reveals that the claim lodged by the appellant before the Butere Land Disputes Tribunal concerned the parcel of land known as Marama/Shinamwenyuli/838 (the suit property). In his testimony before the Butere Land Disputes Tribunal, the appellant stated that the suit property was registered in the name of Eshikhutu Katimi in 1964. In other words, the suit property was registered land.
8. In its determination, the Butere Land Disputes Tribunal purported to change the ownership of the parcel of land known as Marama/Shinamwenyuli/838 together with other related parcels by redistributing them to the appellant herein and other parties. The provincial appeals committee allowed the appeal, thereby in essence setting aside the decision of the Butere Land Disputes Tribunal.
9. Land dispute tribunals were established pursuant to section 4 of the *Land Disputes Tribunals Act, 1990* (repealed). The Act was repealed by section 31 of the *Environment and Land Court Act, 2011*. Jurisdiction of the tribunals was provided for at section 3 (1) of the *Land Disputes Tribunals Act, 1990* (repealed) as follows:
 - (1) 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.
10. A reading of the foregoing provisions makes it clear that the tribunals did not have jurisdiction to determine title to or ownership of registered land. There are indeed many authorities to that effect. See, for example, the decision of the Court of Appeal in the case of *Joseph Malakwen Lelei & another v Rift Valley Land Disputes Appeals Committee & 2 others* [2014] eKLR.
11. In purporting to determine title to or ownership of Marama/Shinamwenyuli/838 which was registered land, the Butere Land Disputes Tribunal exceeded its jurisdiction. Clearly, the appellant's argument that the tribunal acted within its jurisdiction has no basis in law. The Provincial Appeals Committee cannot be faulted for allowing the appeal that was before it.



12. In view of the foregoing, I find no merit in this appeal and I hereby dismiss it. In view of the relationship between the parties, I make no order as to costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 20TH DAY OF SEPTEMBER 2022.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

The appellant in person

The respondents in person

Court Assistant: E. Juma

