

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Civil Appeal 122 of 2003

PAUL TSALWA AMBEYI APPELLANT

VERSUS

CLEMENT SHIMWENYI RESPONDENT

J U D G E M E N T

This judgement is from the decision of Western Province Appeals Committee made in Appeals Committee case No. 163 of 2001. The Western Province Appeals Committee made the decision in the appeal preferred to it by the Respondent who was aggrieved by the decision of the Shinyalu Land Disputes Tribunal which was in favour of the Appellant. The Respondent succeeded in the Shinyalu Land Disputes Tribunal. The Appellant who lost in the Appeals Committee, moved to this court under Section 8(9) of the Land Disputes Tribunals Act No. 18 of 1990. Under the proviso to the said section, an appeal to this court from the Appeals Committee can only be on a point or points of law other than customary law.

In his Memorandum of appeal, the Appellant set out three grounds of appeal thus:

- 1. The Provincial Land Disputes Appeals tribunal erred in law by failing to give any reasons or lay any basis for its decision.*
- 2. The Appeals Tribunal was biased, had predetermined mind against the appellant.*
- 3. The land appeals tribunal was ill constituted against the land dispute appeals tribunal Act Cap 18 of 1990 and its decision therefore anullity in law.*

Ground No.2 entailed evidence of bias. This is not a point Appellant could canvass on appeal in absence of evidence.

As regards ground No.1, Section 8(7) of Act 18 of 1990 enjoins the Appeals Committee to determine appeal and to give reasons for its decision. The Act does not state that the reasons given must be sound and impeachable. If the reasons are not sound, the decision can only be challenged if there is a point of law (other than customary law) involved. In the decision by the Western Province Appeals Committee, the Committee reversed the decision of Shinyalu Land Disputes Tribunal on the grounds that the Respondent who was the appellant in that tribunal had not been heard and it ordered a rehearing of the dispute before the Shinyalu District Tribunal. This did not please the Appellant herein who was the Respondent herein, hence this appeal. There is no merit on ground No. 1 as clearly the Appeals Committee gave reasons for its decision.

As regards ground No.3, Section 9(2) of Act 18 of 1990 requires that an Appeals Committee be constituted by a panel of three members. The record shows that 4 members sat and heard the appeal but 5 members delivered the decision. Clearly this was in violation of sections 8(5) and 9(2) of Act 18 of 1990. The decision of the Appeals Committee can not in the light of this stand. The appeal is on account of this allowed. I order that each party shall bear its own costs in this appeal. I observe that the decision of the Shinyalu Land Disputes Tribunal made in case No. 18 of 2001 did not give land to any party. All it did was to recognize that Paul Tsalwa Ambeyi, the Appellant herein, had a right to claim the land in

dispute namely Land title No. Isukha/Shitochi/857. That did not amount to saying that he was entitled to it.

Dated, signed and delivered at Kakamega this 15th day of February, 2007.

G. B. M. KARIUKI

J U D G E