



REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL 106 OF 2003

JOHN PATRICK OMUKUBA.....APPELLANT

V E R S U S

ALI CHIBOLE BWANA.....RESPONDENT

JUDGEMENT

The Appellant, **JOHN PATRICK OMUKUBA**, preferred an appeal to this court on 11.3.2005 from the decision of the Appeals Committee, Western Province, made on 20.5.2003 in which the Appeals Committee upheld the decision of Lurambi Land Disputes Tribunal.

The record of Appeal shows that the dispute before the Land Disputes Tribunal was about a boundary between the Appellant's land **No. Butsotso/Shikoti/1872** supposed to measure 3 acres and the Respondent's land **No. Butsotso/Shikoti/933** measuring 10 acres. The Respondent in this appeal was the complainant and the Appellant was the Objector in the Land Disputes Tribunal at Lurambi which decided that the Land Registrar be involved to resolve the boundary dispute. The Appellant was not satisfied with that decision and therefore filed appeal to the Appeals Committee which upheld the decision of the Lurambi Land Disputes Tribunal. Still not satisfied with the decision of the Appeals Committee, the appellant preferred the appeal herein. He put forward the following grounds in his Memorandum of Appeal.

- 1. That the Appeals Committee erred in both law and fact in upholding the Tribunals illegal finding that the boundary confirming acreage of each title deed in each case should be established by the District Land Surveyor.**
- 2. That the Appeals Committee erred in both law and fact in determining what had already been established by the District Land Registrar.**
- 3. That both the Tribunal and the Appeals Committee overtly appear to have been motivated by considerations ulterior to law and fact in arriving at their decision.**
- 4. That both the Tribunal and the Appeals Committee lacked jurisdiction to order the District Land Registrar amend land records this being a boundary dispute.**
- 5. That both the Tribunal and the Appeals Committee gave their decisions against the weight of the evidence.**

When the appeal came up for hearing on 25.4.2007, the appellant told the court that the boundaries to his

land have been there since time immemorial.

Mrs. Osotsi, learned counsel for the Respondent, opposed the appeal and submitted that the Appeals Committee was right in its determination because the dispute related to boundary to land which could be resolved by the land Registrar and the District Surveyor. She contended that the Land Disputes Tribunal had jurisdiction to deal with the dispute under section 3 (1) of Act 18 Of 1990.

I have perused the record of Appeal and considered the submissions made by the appellant and the learned counsel for the Respondent.

An appeal to this court from a decision of the Appeals Committee under section 8 (9) of the Land Disputes Tribunals Act No. 18 of 1990 is on a matter of law only (other than customary law). The only ground raising a point of law is ground No. 4 in which the Appellant contended that the Land Disputes and the Appeals Committee had no jurisdiction to order the District Land Registrar to amend land records in the boundary dispute. A careful perusal of the decision of the Land Disputes Tribunal shows that the latter did not **“order the District Land Registrar to amend land records.”** The decision of the said Tribunal read:-

“We therefore rule that the Land Registrars do visit these two particular numbers No. 1872 and 933 for both the buyer and the complainant in order to determine where exactly the position of a boundary separating the two thus where 3 acres and 10 acres should be.”

The parcels of land in question are registered under the Registered Land Act, Chapter 300 of the Laws of Kenya

er section 21 (2) of the Registered Land Act, the Registrar has power to determine a boundary dispute. Section 22 (2) of the said Act stipulates:-

“22 (1) If the Registrar in his discretion considers it desirable to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if any interested person makes application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.”

Where the Registrar determines a dispute under section 22 (2), supra, he is enjoined to make a note to that effect in the registry index map pursuant to section 22 (3) of the said Act which reads:-

“s. 22 (3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the Director of Surveys, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section.”

The appellant was at liberty to institute proceedings either before the Land Registrar or the court and to adduce evidence in that regard which the Land Registrar or the court would receive under section 22 (5) of Cap 300 to determine the dispute. But the Appellant chose to file a dispute under Act 18 of 1990. I am unable to agree with the contention by the Appellant that either the Land Disputes Tribunal or the Appeals Committee ordered the Land Registrar to amend land records. I find no merit in the appeal and I dismiss it with costs to the Respondent.

Dated at Kakamega this 8th day of November, 2007.

G. B. M. KARIUKI

J U D G E