

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

Civil Appeal 94 of 2002

KOTIA OFITI CHEBULAMBO
APPELLANT

V E R S U S

OMUSATSI MUSIKORESPONDENT

J U D G M E N T

On 2.4.97 the Mumias Land Disputes Tribunal ordered Musotsi Musiko to vacate the land known as S. Wanga/Ekero/103 and cancellation of his name from the register of the said land. This order followed a dispute heard by the said Tribunal involving the said Musatsi Musiko and one Kotia Ofiti Chebulambo. Dissatisfied with the decision, Omusatsi Musiko appealed to the Provincial Appeals Committee at Kakamega. Kotia Ofiti Chebulambo did not appear before the said Appeals Committee, at least this is what is borne out by the record. Consequently, the Appeals Committee reversed the decision of the Mumias Land Disputes Tribunal and awarded the said land to Omusatsi Musiko on 30.5.2002.

On 22.10.02, Kotia Ofiti Chebulambo, the Appellant herein, lodged appeal to this court against the decision of the Appeals Committee and put forward six grounds. In a nutshell, the appellant alleged bias against him on the part of the Appeals Committee which, he also contended, had conspired with Omusatsi Musiko, the Respondent, to give the latter the said land, the subject matter of the dispute. He also contended that the Appeals Committee's decision was not supported by evidence. In addition, the Appellant contended that the principles of natural justice were breached by the Appeals Committee in that he was not heard and no notice had been given to him to attend the hearing.

When the appeal herein came up for hearing before me on 9.3.05, the Appellant informed the court that the appeal had been prepared for him and that he was not literate. He left the matter to the court to decide.

The Respondent on his part stated that he opposed the appeal and submitted that the subject land had been awarded to him. He paused there and left the matter to the court to decide.

Under section 8 (8) of the Land Disputes Tribunals Act (Act No.18 of 1990), the decision of the Appeals Committee is final on any issue of fact and no appeal shall lie there-from to any court. under section 8 (8) of the said Act either party to the appeal before the Appeals Committee may appeal from the decision of the Appeals Committee to this court on a point of law within sixty (60) days from the date of the decision complained of provided that no appeal shall be admitted to hearing by this court unless a Judge of this court has certified that an issue of law, other than customary law, is involved.

The decision of the Appeals Committee is shown to have been made and delivered on 30th May, 2002. The appeal herein was lodged in court on 22.10.02 after the expiry of four months and twenty days. Under section 8 (8) of the Land Disputes Tribunal Act (Act 18 of 1990), the appeal was time-barred. It fails on that ground. It is struck out with no order as to costs. I find it unnecessary to go into its merits.

Dated, signed and delivered at Kakamega this 17th day of February, 2006.

G. B. M. KARIUKI

JUDGE