

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

Civil Appeal 69 of 2000

JACOB S. A. OBULEMIREAPPELLANT

V E R S U S

SAMSON AYUKU OPIAYORESPONDENT

J U D G M E N T

Both the Appellant and the Respondent were involved in a dispute over land title No. Marama/Shikunga/1033 which dispute was determined by Butere Land Disputes in 1999. The award was read to the parties on 11.3.2000. The decision was adopted as a judgment of the court on 28.9.2000 by Senior Resident Magistrate (J. Thuita, Ms.) in her Ruling in Kakamega C.M. Misc. Award (case) No. 173 of 1999. The Senior Resident Magistrate held that the appeal filed on 3.3.2000 in the Appeals Committee by the Appellant from the decision of the Butere Land Disputes Tribunal was out of time as it was filed after 30 days and therefore she saw no reason why the award could not be confirmed as a judgment of the court.

In the four grounds set out in the memorandum of appeal, the Appellant faulted the Ruling of the Senior Resident Magistrate. The main ground was No. 3 in which the Appellant contended:-

“4. The learned trial magistrate erred in law and fact in not appreciating that the appeal at the Provincial Land Disputes Tribunal was filed on 27.3.2000 while the award was read to both parties on 7.3.00, a fact which proves that the appeal was filed well within time.”

The record of appeal is messy and perhaps a neater copy ought to have been required. It has not been easy perusing the record whose many pages are indecipherable and wrongly paged.

Be that as it may, the decision whether or not the appeal to the Provincial Appeals Committee was filed in time was not a matter for the Senior Resident Magistrate to make. The Senior Resident Magistrate was not seized of the matter and there was nothing before her on the basis of which the court could make that determination. Once the Senior Resident Magistrate was satisfied that an appeal had been filed or was pending before the Appeal Committee, she ought to have kept the application before her in abeyance pending the outcome of the appeal. The trial court misdirected its mind on this point and proceeded, wrongly in my view, to hold that the appeal before the Appeals Committee was out of time and for that reason endorsed the award as a judgment of the court.

In the light of the foregoing, I allow the appeal and set aside the decision of the Senior Resident Magistrate at Kakamega (J. Thuita Ms.) made on 29.9.00 in Kakamega Misc. Award No.173 of 1999. I direct that the adoption of the award shall await the outcome of the appeal before the Western Provincial Appeals Committee. Each party shall bear its own costs.

Dated, signed and delivered at Kakamega this 5th day of May 2006.

G. B. M. KARIUKI

J U D G E