



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**Civil Appeal 71 of 2002**

**PETER MMINI SHAKA .....APPELLANT**

**V E R S U S**

**JAMES SHAKA MARTIN .....RESPONDENT**

**J U D G M E N T**

This is a judgment from the decision of the Western Provincial Land Disputes Appeals Committee which is said to have been adopted as a judgment of the court on 20/6/02 in CMC Misc. case No. 48 of 2001. The Memorandum of Appeal set out 8 grounds {[a] to [h]}. The main grounds were in paragraphs [a] and [g]. In ground [a] the Appellant, Peter Mmini Shaka, submitted that the Appeals Committee had no jurisdiction to adjudicate on the issue of title to land and on ground [g], that the Appeals Committee was not properly constituted in that the panel had 4 or 5 members instead of the mandatory three.

The record of appeal shows that the South Kabras Land Disputes Tribunal heard the dispute involving the parties and on 14.11.00 awarded 4 acres of the land comprised in title No. S/Kabras/Samitsi/425 to Peter Mmini Shaka and the balance to James Shaka Martin. When the decision was appealed to the Western Provincial Land Disputes Appeals Committee, the latter varied the decision by ordering that James Shaka Martin would get 3 acres from the said land and Peter Mmini Shaka the balance thereof. Four members sat in the latter committee while a panel of six members had sat in the Kabras Land Disputes Tribunal.

While the Land Disputes Tribunal is required to have a panel of three or five members pursuant to section 4(1) of the Land Disputes Tribunals Act No.18 of 1990, the Appeals Committee is enjoined to have a panel of three members pursuant to section 8 (5) of the said Act.

Under section 8(7) of the said Act, the decision of the Appeals Committee is required to be reasoned. But more fundamental, the jurisdiction in both the Tribunal and the Appeals Committee does not include adjudication of title to or interest in title to land.

Mrs. Osodo, learned counsel for the Appellant urged me to allow the appeal as the Appeals Committee was not properly constituted and as it acted beyond its jurisdiction. The appeal was not opposed. The Respondent was served as evidenced by the affidavit of service sworn on 6.3.06 by Zablon Ochieng Senge, a process server.

I have perused the record of appeal and given due consideration to the submissions of Mrs. Osodo. It is my finding that both the Land Disputes Tribunal and the Appeals Committee were not properly constituted. It is also my finding that both acted outside the purview of their jurisdiction. The proceedings and decision of the Western Provincial Land Disputes Committee were was a nullity as was also the decision of the Kabras Land Disputes Tribunal. I so hold.

I allow the appeal and quash the decisions made by both the Kabras Land Disputes Tribunal and the Western Provincial Land Appeals Committee. The Appellant shall have the costs of the appeal.

*Dated, signed and delivered at Kakamega this 5<sup>th</sup> day of May 2006*

G. B. M. KARIUKI

JUDGE