



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

Civil Appeal 62 of 2001

EMMANUEL OBWONYA
ALUTSESHEAPPELLANT

V E R S U S

HENRY KOMBO
ALUTSESHERESPONDENT

J U D G M E N T

This is a judgment on the appeal against the decision of the Western Provincial Appeals Committee made on 24.7.2001 in Western Provincial Appeals Committee case No.20 of 2001. In its decision, the Appeals Committee upheld the decision of the Lurambi Divisional Land Disputes Tribunal.

The parties to the dispute in Lurambi Land Disputes Tribunal were two brothers, Henry Kombo Alutseshe, and Emmanuel Obwonya Alutseshe. Their father, Alutseshe Makachia is said to have died in 1957 leaving a parcel of land known as Butso/Indngalasia/46. It is this land that the two brothers have been fighting over. In 1989, the title was closed on subdivision and six subdivided titles ensued being land title Nos. Butso/Indangalasia/1288 to 1293. After hearing the dispute, the Lurambi Divisional Land Disputes Tribunal in case No.122 of 2000 ruled that the subdivisions would be cancelled and title No. Butso/Indangalasia/46 restored and subdivided again into two portions of 13 acres and 15 acres with the bigger portion going to Emmanuel Obwonya Alutseshe, the elder of the two brothers (and the smaller portion going to his younger brother, Henry Kombo Alutseshe). Aggrieved with this decision, Emmanuel Obwonya Alutseshe appealed to the Western Province Appeals Committee. After hearing the appeal, the Appeals Committee endorsed the decision for cancellation of the subdivisions and restoration of the original title No. Butso/Indangalasia/46 which the Appeals Committee ordered to be subdivided into two equal portions between the said brothers. It was this decision that Emmanuel Obwonya Alutseshe appealed against to this court, hence this judgment.

Mr. Akwala, learned counsel for the Appellant, contended that the appeal which set out five grounds was meritorious and ought to be allowed because the registration of the land was a first registration and while the Tribunal had no power to interfere with it, the claim by the Respondent was statute barred. The 4 main grounds of appeal were –

1. *The Provincial Land Disputes Appeals Tribunal erred in failing to hold that title to L. R. No. BUTSOTSO/INDANGALASIA/46 which was the subject of the proceedings before it and before the Lurambi Divisional Land Disputes Tribunal being a first registration was sacrosanct and could not be defeated or interfered with as the Lurambi Land Disputes Tribunal purportedly did.*

2. *The Provincial Land Disputes Appeals Committee erred in failing to note and rule that the respondent's claim before the Lurambi Land Disputes Tribunal was instituted out time and statute barred and it ought to have allowed the appellant's appeal before it and proceeded to dismiss the respondent's claim.*

3. *The Provincial Land Disputes Appeals Committee erred in law and fact in rejecting the appellant's appeal before it when the respondent's claim concerned cancellation of titles to land and proceeded to order cancellation of all titles created from L.R. No. BUTSOTSO/INDANGALASIA/46 when the proprietors of the subsequent titles were not parties to the proceedings before the Tribunal and the Appeals Committee and when the Land Disputes Tribunal had no jurisdiction to entertain such a claim or make the orders it purportedly made under the Land Disputes Tribunal's Act, No.10 of 1997.*

4. *The Provincial Appeals Committee erred in upholding the decision of the Lurambi Land Disputes Tribunal when the latter was a nullity and void ab initio and its orders constitute a perpetuation of an illegality and have resulted in a serious miscarriage of justice.*

He pointed out that the proprietor of the plots subdivided from the original title No. Butsotso/Indangalasia/46 were not made parties to the proceedings in the Divisional as well as the Provincial Tribunals and therefore their decisions were a nullity. In particular, Mr. Akwala emphasized that the Tribunals had no jurisdiction under section 3 of the Land Disputes Act No.18 of 1990 and that their decisions were ultra vires their powers and therefore null and void.

On his part, Mr. Athung'a, learned counsel for the Respondent opposed the appeal and contended that the tribunals had power to order subdivision and the issue of limitation did not arise as it had not been raised earlier. The subdivisions, he said, preceded the claim.

I have perused the memorandum of appeal in this appeal and the decisions and proceedings of both Lurambi Divisional Land Disputes Tribunal as well as the Western Province Appeals Committee. I have also considered the submissions of both the learned counsel. Section 3 of the Land Disputes Act No.18 of 1990 confers jurisdiction on the Land Disputes Tribunal in all cases of a civil nature involving a dispute as to:-

- (a) the division of, or the determination of boundaries to land including land held in common;
- (b) claim to occupy or work on land; or
- (c) trespass to land.

The decision made by Lurambi Land Disputes Tribunal was outside the powers conferred by section 3 (Supra). It affected title to the said land. The Tribunal's jurisdiction did not include or extend to determination of right to title to land or cancellation of titles to land which is what the Tribunal did. Clearly, its decision was ultra vires its powers.

The Appeals Committee also purported to cancel titles to land and to order not only restoration of title No. Butsotso/Indangalasia/46 but also new subdivisions and creation of new titles to the parties. The appeals committee endorsed the mistake committed by the Lurambi Divisional Land Disputes Tribunal. The subdivision referred to in section 3 of Act 18 of 1990 does not envisage creation, transfer of title to land or cancellation of existing titles or creation of new titles for the simple reason that this is the preserve of courts of law. Moreover, the Lurambi Divisional Land Disputes Tribunal and the Appeals Committee, were enjoined to observe the law of the land and clearly while the claim by the Respondent was statute barred, the first registration could not be interfered with in view of section 143 of the Registered Land Act under which the land was registered. I find merit in grounds 1, 2, 3 and 4 of the appeal. I allow the appeal. I quash the decision of the Western Province Appeals Committee dated 24-07-2001 made in Appeals Committee Case No.20 of 2001. I also quash the decision of the Lurambi Divisional Land Disputes Tribunal made in Tribunal Case No.122 of 2000. As the parties are brothers, I order that each party shall bear its own costs.

Dated at Kakamega this 29th day of June, 2006.

G. B. M. KARIUKI

J U D G E