

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Civil Appeal 25 of 2004

(Appeal from the decision of the Provincial Appeals Committee

Western Province dated 19th April, 2000)

JOSEPH OKWOMI OKWENDO..... APPELLANT

V E R S U S

SOFIA KEYA AYUKA RESPONDENT

J U D G E M E N T

This is a judgement from the decision of the Appeals Committee, Western Province, made on 3.9.2002 in Appeals Committee case No. 126 of 1999 which, surprisingly, is said to have been adopted as a judgement of the court on 24.3.04 after being filed in Kakamega C.M. Court Misc. Case No. 137 of 1999.

The Appeals Committee is a creature of statute and is established by section 9(1) of the Land Disputes Tribunals Act No. 18 of 1990. Under section 8(9) of that Act, its decisions are appealable to the High Court on matters of law, other than customary law, and such appeal is required to be filed within 60 days from the date of the decision complained of. If, therefore, the decision of the Appeals Committee was made on 3.9.2002, the appellant had up to 3rd November 2002 to file appeal. Consequently, the decision of the Appeals Committee could not properly be endorsed as a judgement of the court before the 60 days for lodging appeal had elapsed.

The appellant, Joseph Okwomi Okwendo, put forward six grounds of appeal in his Memorandum of Appeal dated 06.05.2004. Mr. Nyikuli, learned counsel for the Appellant who appeared during the hearing argued as one grounds 1, 2, 3 and 4 and abandoned grounds 5 and 6.

The Respondent, **Sofia Keya Ayuka**, appeared in person.

The record shows that the dispute between the Appellant and the Respondent related to land titles Nos. South Wanga/Ekero/1802 and 1804. These two parcels of land were registered under the Registered Land Act, Cap 300 and from 1997 the Appellant was the proprietor thereof following transfer from the previous proprietor, Makokha Ayuka Welimo in consideration of Shs.100,000/= for Plot 1802 and Shs.70,000/- for plot 1804.

The Respondent claimed part of the suit land from the Appellant and in 1999 lodged her claim with Mumias Land Disputes Tribunal which ruled that the Appellant would transfer two (2) acres of the land comprised in titles Nos. S/Wanga/Ekero/1802 and S/Wanga/Ekero/1804 which measure 1.0 hectare and 1.20 hectares respectively.

Aggrieved by this decision, the Appellant appealed to the Appeals Committee which upheld the decision of Mumias Land Disputes Tribunal, hence this appeal.

Mr. Nyikuli urged this court to allow the appeal and set aside the decision of the Appeals Committee because it had no jurisdiction to interfere with title to land as it did. That was the main thrust of grounds 1, 2, 3 and 4.

The Respondent who was in person contended that the land in dispute was her property.

The power of the Land Disputes Tribunal whose decision is appealable to the Appeals Committee is set out in section 3(1) of Act 18 of 1990. It does not include determination of ownership of title to land. The Appellate jurisdiction of the Appeals Committee does not exceed that which is donated to the Land Disputes Tribunal to deal with disputes under section 3(1) supra).

The Mumias Land Disputes Tribunal's decision purported to grant to the Respondent two acres of the land comprised in the two aforementioned titles registered in the names of the Appellant. In so doing, the Tribunal acted beyond the purview of its statutory jurisdiction. Its decision was a nullity.

The Appeals Committee's decision upholding the decision of the Land Disputes Tribunal was a nullity as it purported to uphold a decision which in law was null and void for want of jurisdiction. It is my finding that the decisions of the Land Disputes Tribunal at Mumias and the Appeals Committee were both a nullity.

In the circumstances, the appeal succeeds. The decision of the Appeals Committee made in Appeal Committee case No. 126 of 1999 and the decision of the Mumias Land Disputes Tribunal made in Land Case No. 2 of 1999 are hereby set aside. Each party shall bear its own costs.

Dated at Kakamega this 30th day of November, 2006.

G. B. M. KARIUKI

J U D G E