

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL APPEAL CASE NO. 66 OF 2002**

TAULO JUMA NASONGO APPELLANT

VS

MASINDE LUKETERO a.k.a.

MASINDE NASONGO RESPONDENT

J U D G M E N T

This appeal is against the findings and award of the Western Provincial Appeals committee and which decision was adopted in Bungoma District Magistrate's court Land Disputes case No. 26 of 2002 on 20th August 2002. The appellant was granted leave to proceed with the hearing ex parte of the appeal when the Respondent failed to turn up for hearing in court despite having been served with a hearing notice as evidence in the affidavit of service sworn by Raphael Pamba dated 18th June 2004.

The appellant argued two main grounds in his appeal. The first ground is that the Western province appeals committee erred in law in entertaining the matter without jurisdiction. The appellant's counsel pointed out that the land in dispute that is L.R. No. NDIVISI/MAKUSELWA/460 is a registered Land. The same is said to have been adjudicated and registered in 1963 in the joint names of the appellant and the Respondent.

The record reveals that the dispute placed before the Land Disputes tribunal was in respect of a registered Land namely L.R. No. NDIVISI/MAKUSELWA/460. The Respondent herein had lodged a complaint to have the particulars relating to the register and title of the aforementioned parcel of land altered. It would appear the Land Disputes Tribunal bought the idea and consequently moved to order for the alteration of the particulars of the register. The appellant now complains that the Tribunal acted without jurisdiction. Under the provisions of Section 3 (3) of the Land Disputes Tribunals Act it is clear that the tribunal is barred from entertaining a dispute or matters touching on title to land. Therefore the Western Provincial Appeals Committee acted beyond its mandate as prescribed by the law. Consequently, the title relating to L.R. No. NDIVISI/MAKUSELWA/460 was illegally interfered with by a body which had no jurisdiction at all hence that decision must be quashed. The orders made are nullities and are unenforceable in law. The court of appeal of Kenya in the case of **ASMAN MALOBA WEPUKHULU & ANOTHER VS FRANCIS WAKWABUBI BIKETI C.A. no. 157 of 2001** held that the Land Disputes Tribunal had no jurisdiction to entertain a matter relating to a claim over title to land. I am bound by that decision which principles I have applied in this appeal.

The second ground argued by the appellant is that the Land Disputes Tribunal erred in entertaining a matter which was time barred. I have perused the record placed before me. It shows that the Land Registrar, Bungoma, cancelled the title issued to both parties on 8th April 1974. The Respondent lodged a complaint before the Land Disputes Tribunal in the year 2002 to have those alterations effected by the Land Registrar in 1974 changed with a view of restoring the title in his name alone. It is obvious that the cause of action arose on 8th April 1974. The law is very clear that a claim over title to land must be commenced within 12 years. In this case the Respondent sought to claim title well beyond the statutory period. The action was therefore time barred and hence incompetent. Even if the land Disputes Tribunals had jurisdiction to entertain matters relating to a claim over title to land the Land Disputes Tribunals Act does not allow them to handle matters which are time-barred. In this case the Western Province Land Disputes Appeals Committee acted beyond its jurisdiction. Its action shall obviously prejudice the appellant in that it took away his prescriptive rights to the suit property. These rights can only be agitated by the appellant in this court and not before the Land Disputes Tribunal which in effect appears to have evicted the appellant devoid of jurisdiction.

In the final analysis I have come to conclusion that the appeal has merit. Consequently the appeal is allowed with the result that the decision of the Western Province Land Disputes Appeals Committee and the adoption order are quashed with costs to the appellant.

DATED AND DELIVERED THIS 30th DAY OF July 2004

J.K. SERGON

JUDGE