



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**CIVIL APPEAL NO. 36 OF 2001**

**(ARISING FROM BUNGOMA SPM'S COURT LDT CASE NO.20 OF 2001)**

**JOSEPH BUYUNI.....1<sup>ST</sup> APPELLANT**

**TECLA OMINA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**JAMES KIMALENI SANGURA.....RESPONDENT**

**JUDGEMENT**

[1]. This case has a history. The respondent herein Mr. James Kimaleni Sangura filed a case in Bungoma Senior Resident Magistrate's Court against the appellant in Case No.100 of 1984. The case was for specific performance. Judgement in that case said that the plaintiff could not succeed in his case for specific performance for purchase of the land because the transaction had no Land Control consent. The appellant was ordered to refund the purchase price Kshs.12,015 that the respondent had paid. There was no appeal to that order.

[2]. Not satisfied, the respondent filed another case in the Kanduyi Lands Disputes Tribunal Case No.50 of 1997. He was seeking six acres from the appellant. He succeeded in his claim and was awarded the said six acres. By the time the respondent had lodged his claim with the tribunal, the appellant who had title had subdivided his land and sold part of the land to the 2<sup>nd</sup> appellant and the lands became E.Bukusu/N.Sang'alo 2884 and 2885. The first and second appellants then appealed to the Western Province Land Disputes Appeals Tribunal which upheld the findings of the Kanduyi Lands Disputes Tribunal and infact awarded the respondent not six acres but five(5) acres.

[3]. This appeal is against that award on the basis that it is bad in law statute barred and that the tribunal had no jurisdiction to entertain the claim and to order such award. They also pray that this Court do cancel all titles that emanated from the said decision of the tribunal. And further that the entries in the land Register be cancelled and the appellants be registered as the proprietors of the suit land.

[4]. I had earlier dismissed this Appeal on 15/6/2015. An application to reinstate the appeal was filed and after due service I reinstated the appeal on 29/9/2016. The case was fixed for hearing on 27/9/2016 and Mr. Sichangi appeared for the appellants and the respondent who was served did not appear. Ms. Sichangi then relied on his grounds of Appeal and the submissions filed herein and the Court was to consider the same and decide the Appeal.

[5]. Jurisdiction of the two tribunals have been raised. It was argued that the Kanduyi Lands Dispute Tribunal which awarded the respondent six acres and the Western Province Land Appeals Tribunal which

reduced the award and awarded the respondent five(5) acres instead of six had no jurisdiction. Jurisdiction is everything. A Court that decides a matter without jurisdiction does nothing and its award amounts to nothing.

See; Owners of motors Vessel "Lillian" S vs Caltex Oil (Kenya) Ltd 1989 KLR 1

The jurisdiction of the Lands Disputes Tribunal Act No.18 of 1990 now repealed was set out in section 3 of the same. Their jurisdiction was

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

When the Kanduyi Land Disputes Tribunal and the Western Province Land Appeals Tribunals attempted to decide on title to land, they acted without jurisdiction. Their decisions amounted to nothing. Their orders could not at all affect the suit land(s). Their Acts were a nullity and any action founded in the same is a nullity. See Macfoy vs United Africa Co. Ltd [1961]3 ALL ER 1169 at 1172 which says that if you put something over nothing, it will fall. The end result is that this appeal succeeds. The entries made in the land(s) appealed against prior to the Appeal and pursuant to the tribunal orders are hereby quashed and set aside. The Land Registrar Bungoma shall reinstate the register as It was prior to the Western Province Land Appeals Tribunals Orders.

For the avoidance of doubt the Appeal herein succeeds with costs to the appellants.

Judgment in open court.

**DATED and DELIVERED at BUNGOMA this 10<sup>th</sup> day of March, 2017.**

**S.N. MUKUNYA**

**JUDGE**

**In the presence of:**

Court Assistants - Chemtai/Joy

Applicant - Present

Defendant - Present