



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL APPEAL CASE NO.59 OF 2009

(Appeal arising from the decision of the Western Province Land Disputes Committee

adopted as judgement of the Court by Bungoma Chief Magistrate's

Court in Land Disputes Tribunal Case No.13 of 2009)

LABAN KILISWA KHANGASI.....
.....APPLICANT

VERSUS

CHRISTOPHER NAMUNYU.....1ST RESPONDENT

PETER SIMIYU MICHI.....2ND
RESPONDENT

YOHANAH SICHANGI MICHI.....3RD
RESPONDENT

JUDGEMENT

[1]. This is an appeal from the decision of Tongaren Land Disputes Tribunal in Tribunal Case No.13 of 2009 in which the appellant was awarded 6 ½ acres from land parcel Bungoma/Kamukuywa/432 while the rest of the land was awarded to the respondents. This award was confirmed by the Western Province Land Disputes Tribunal on 4/12/2008. The appellant being dissatisfied with the Western Province Land Disputes Tribunal appealed to this Court and set four grounds of appeal

He primarily says that;

1. *That the Tongaren Land Disputes tribunal had no jurisdiction.*
2. *That the action that was before the said tribunal was barred by limitation.*
3. *That the Appeal Tribunal erred in Law in that it should not have entertained a matter affecting Title to land.*

[2]. In his argument, Mr. Khakula learned Counsel for the appellant relied on the grounds of Appeal and stated that under section 3(1) of the Lands Disputes Tribunal Act No.18 of 1990 the Tribunal has no jurisdiction to deal with title to land.

Further he argues that even if the tribunal had jurisdiction, this transaction arose in 1976 and that by the time the action was brought up in 2006 it was time barred by limitation of actions since it was over 20 years old. He relied on section 4(1) of the limitation of actions act Cap 22. He argued that this was a contract of sale of land whose limit is only 6 years.

The Counsel argued that the adoption of the Tongaren Land Disputes Tribunal by the Kimilili Senior Magistrate's Court in Case No.18 of 2006 was ultra vires the powers of the tribunal and that, trial Court's orders should be set aside.

[3]. The respondents oppose this Appeal. They argued that one of the respondents Peter Simiyu Michi intended to sell family land to the appellant privately for 31,000 and was only paid Kshs.16,000. That there was a breach of contract and that the appellant fraudulently transferred the land into his names. They further argued that the consent dated 19/1/1977 was obtained through fraud. The respondent however argue that since the tribunal tried to apportion the land fairly and in order to have this matter expeditiously disposed, then the tribunal order should stand.

Mr. Areba learned Counsel for the respondents relied on his filed submissions.

[4]. The question for determination is whether the Tongaren Land Disputes Tribunal had jurisdiction when it awarded 6 ½ acres out of Bungoma/Kamukuywa/432 to the Appellant and left the rest of the land to the respondents.

The jurisdiction of Land Disputes Tribunals was clearly set out on Land Disputes Tribunal Act No.18 of 1990 in section 3 as follows:

(a) the division of, or the determination of boundaries of land, including land held in common;

(b) a claim to occupy or work land; or

(c) trespass to land

From the foregoing, it is clear that the Tribunal has no jurisdiction to deal with Title to land. This issue has been settled by the Court of Appeal in many instances. See;

Civil Appeal No.47 of 2009

Zebedayo Korosia vs Eliud Wepukhulu Khauka and The Hon. Attorney General

When a Court or tribunal Acts without jurisdiction its award is a nullity. And whether that award has been made the decision of the Court is immaterial. See also,

Court of Appeal Civil Appeal No.47 of 2009 aforesaid. Jurisdiction is everything. Any decision made by a Court or tribunal without jurisdiction remains a nullity and anything founded on it is a nullity. See;

Owners of Motor vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLRI.

[5]. Having come to that conclusion, I need not deal with the other grounds of Appeal set forth by the appellants. The net result is that this Appeal succeeds. The decision of the Tongaren Land Disputes Tribunal is quashed and set aside. The confirmation of the said award by the Western Province Land Disputes Tribunal is also set aside. Also set aside is the confirmation of the award of the Tongaren Land Disputes Tribunal by the Senior Resident Magistrates Court Kimilili on land case No.18 of 2006. The suit land reverts to its original position prior to the said orders.

The costs of the Appeal shall be to the appellants.

Judgment read in open court.

DATED and DELIVERD at BUNGOMA this 10th day of March, 2017.

S.N. MUKUNYA

JUDGE

In the presence of:

Court Assistants - Chemtai/Joy

Mr. Makokha - For Khakula for the applicant

Mr. Were - For Areba for the respondents