



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL APPEAL CASE NO. 27 OF 1999

KAGWA NAMUSONGE MULIRO.....APPELLANT

VERSUS

PETER WESONGA KAPIMA.....RESPONDENT

JUDGEMENT

[1]. The appellant in this case appeals against the Judgement of the Provincial Land Appeals Tribunal sitting at Kakamega on 7/12/98. The said Land Appeals Tribunal ruled that the appellant in this Court failed to avail documentary evidence of purchasing of an extra 3 acres on plot No. West Bukusu/South Mateka/2259. The appeals Court therefore allowed the appeal from the decision of South Bukusu Land Disputes Tribunal which sat at Bumula District Officer's office on 23rd September 1994 and which had ordered that 3 acres of land parcel No. West Bukusu/South Mateka/2259 to be transferred by Silikhe Mulati Namachanja to the successor Dr. Anjella Muliro on behalf of the estate of Redempta Nekesa Muliro.

[2]. The appellant herein filed the following grounds of appeal:-

- 1. The Provincial land appeals committee erred in law in allowing the respondents appeal when there was an admission or record to the effect that the respondent was ready to transfer the parcel of land sold to the applicant.***
- 2. The Provincial Land Appeals Committee erred in law in shifting the burden of proof of the purchase of land parcel no. W. Bukusu/S. Mateka/2259 to the appellant and thereby occasioned a miscarriage of justice.***
- 3. That the Provincial Land Appeals Committee erred in law in holding that the appellant's occupation and/or use of land parcel no. W. Bukusu/S. Mateka/2259 was only on hiring terms without any shred of evidence to that effect.***
- 4. That the land appeals committee erred in law in allowing the Respondents appeal when the same was not validly before it and thereby occasioning a miscarriage of justice.***
- 5. That the findings of the verdict of the Provincial Appeals committee was against the weight of the evidence and therefore in supportable in law.***

[3]. This matter was referred to Land Disputes Tribunal under the Land Dispute Tribunal Act No.19 of 1990. Under that Act section 3(1) provided as follows;

[3]. (1). Support to this Act, 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) a claim to occupy or work land; or

(c) trespass to land shall be heard and determined by a Tribunal established under section 4.

From the provisions of the Act the Tribunal had no jurisdiction to determine title to land. This issue has been decided on a myriad of Cases ¹

¹ Cases – Jidraph Nyoro Kangethe –vs- Silas Kangethe

- Republic –vs- Olololunga Land Disputes Tribunal ex part Isaiah Kiplangat Cheluget

Nairobi H.C. Misc. Case No.926 of 1999

- Fanca Allers Sogno in Misc. Civil Application No.181 of 1999

High Court - Mombasa

Now, if the Tribunal had no jurisdiction to determine title to land, was there any legal decision by the Tribunal?

There was no legal and or binding decision that the Western Provincial Disputes Appeals Tribunal could therefore determine in the appeal before them. This is because the decision from which the appeal arose was itself a nullity. The confirmation of the Western Province land disputes Appeals tribunal decision by the Senior Principal Magistrate Bungoma on 14th October 2002 was equally a nullity since there was no decision capable of being confirmed and none could possibly arise from the South Bukusu land disputes tribunal in as far as they purported to determine title to land.

[4]. There was another issue. This was the question whether this Court has or had jurisdiction under the repealed Land Disputes Act of 1990. In that regard Section 8(9) of the act provides as follows;

“Either Party may appeal from the decision of the Appeals Committee to the high Court on a point of law within 30 days from the date of the decision complained of”

There is no doubt therefore, that this Court had jurisdiction to hear appeals from the Appeals Tribunal of the Provinces on a point of Law. Ground No.4 of the appeal filed herein is spot on and is on a point of Law.

In any case, the Environment and Land Court Act No. 19 of 2011 has since repealed the Land Disputes Act 1990 and all those matters falling under the Act can now be handled by the Environment and Land Court which has been accorded jurisdiction under section 13 of the same.

[5]. The net result is that Land parcel W. Bukusu/S. Mateka/2259 remains as it was prior to the decision of South Bukusu Land Disputes Tribunal.

This appeal succeeds to that effect.

I order that each party bears its own costs.

DATED at BUNGOMA this 9th day of March 2015.

S. MUKUNYA

JUDGE