



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL APPEAL NO. 38 OF 2010

JAMES KIRUI KIMURSI APPELLANT

VERSUS

JOHN KIPSIGEI KITUR1ST RESPONDENT

SAMSON KIPTOO CHEPKWONY2ND RESPONDENT

J U D G M E N T

1. **James Kirui Kimursi** (*appellant*) was the Respondent in the Provincial Land Disputes Tribunal Nakuru Miscellaneous Disputes Appeal No. 76 of 2009 while the Respondents herein were the Appellants.
2. This matter had originated from the Ainamoi Land Disputes Tribunal Claim No. 49 of 2009. An award in favour of the Appellant was made. The Respondents were aggrieved and filed an appeal at the Provincial Land Disputes Tribunal which set aside the decision of the Ainamoi Land Dispute Tribunal prompting the present appeal by the appellant.
3. In the appeal raises the following grounds;
 - a. *The Rift Valley Province Land Disputes Appeals Committee erred on a point of Law by not recording the depositions of the parties thus rendering the decision of the Committee untenable in law.*
 - b. *The decision of the Rift Valley Land Disputes Appeals Committee is untenable in law by not giving reasons for its decisions contrary to the law.*
 - c. *The decision of the Rift Valley Land Disputes Committee is bad in Law in arbitrarily setting aside the decision of Ainamoi Land Disputes Tribunal adopted on 2nd December, 2009 which was proper and in accordance with the law.*
 - d. *The decision of the Rift Valley Land Disputes Appeals Committee is vague, perfunctory, contradictory and against the Land Disputes Tribunal Act 1990 and a nullity.*
4. The parties agreed to dispose of the appeal by way of written submissions which they both filed and exchanged. In his submissions Mr. Ong'anyi for the Appellant merely expounded on the grounds of appeal raised. The same was summarized in his supplementary submission where he reiterated that no reasons were given by the Provincial Committee for the verdict they arrived at. He further submitted that no opportunity was given to the appellant to address the court. He also quoted provisions from the then **Land Disputes Tribunal's Act 1990** (Act No. 8 of 1990).

5. **M/S Nyigei** for the Respondents in her submissions opposed the appeal saying the decision of the Provincial Land Disputes Tribunal should be considered wholly. She submitted that the decision was divided into five(5) parts which should all be read together and not selectively. Mr. Koko took over from M/S Nyigei for the respondents.
6. He further submitted that the matter before the Tribunal was a boundary dispute which was dealt with by the Land Disputes Appeals Committee.
7. From the record filed the decision of the Ainamoi Land Disputes Tribunal was filed at the Chief Magistrate's Court at Kericho as Miscellaneous Application No. 89 of 2009. The award was read to the parties and adopted as judgment on 2nd December, 2009. A decree was drawn in terms of the adopted award.
8. **Section 8(6)** of the repealed Land Disputes' Tribunal Act provided.

“At the hearing of the appeal, the party bringing the appeal shall begin”.

While **Section 8(7)** provided

“ After giving each party an opportunity to state his case the Appeals Committee shall determine the appeal giving reasons for its decision”.

These two provisions laid down the procedure to be followed when an appeal from the Land Disputes Tribunal was being heard by the Appeals Committee.

9. In a nutshell the Appeals Committee had to:
 - i. *Give each party an opportunity to be heard.*
 - ii. *It had to give reasons for its decision.*

10. I wish at this point to reproduce the decision of the Appeals Committee:

DECISION

Having heard and considered the representation from all parties together with their witnesses and having considered all the documents submitted by all the parties to us. We hereby decide as follows.

BACKGROUND FACT

Boundary Dispute

ISSUES SUMMARIZED

These are brothers claiming new boundaries to the late fathers shares.

FINDING/DECISION AND REASON

After hearing all the statements this plots are as follows:

- John Kipsige Kitur & others of ID.No. 4757861 has 0.9ha.
- James Kirui Kimusi of ID.No. 7480823 has 0.08Ha
- Samson Cheptoo Chepwony has 0.9 ha

DECISION/VERDICT

Boundaries to remain as there are Land Registrar to measure this plots as per the search

- John Kisige - 0.9Ha (cancelled)
- James Kirui – 0.08ha
- Samson Cheptoo Chepkwony plot 703/0.9ha

11. Did this Appeals Committee ever hear the parties? There is no evidence that this was done. Why was the decision of the Ainamoi Land Disputes Tribunal set aside?

12. The decision produced above is so vague. The same does not give any reasons, for the verdict arrived at.

From it, one cannot even tell what the decision of the Ainamoi Land Disputes Tribunal was, or how it differs from what the Appeals Committee arrived at.

13. In point No.5 of the decision the Appeals Committee refers to some acreage for **James Kirui** and **Samson Cheptoo, Chepkwony, John Kipsige Kitur** and others. From which parcels have these portions been plucked from? No one knows as the decision does not indicate the same.

14. The analysis above shows that the Rift Valley Province Appeal Committee did not follow the procedure in the repealed Act in arriving at the decision they made on **31st August, 2010**. The same cannot therefore be allowed to stand.

15. The Appeal is allowed. The decision of the Rift Valley Province Land Disputes Appeals Committee dated 31st August, 2010 is set aside. I substitute it with the judgment in Kericho Chief Magistrate's Civil Application No. 89 of 2009. Since the errors were procedural and committed by the Appeals Committee the Respondents will not be condemned to pay costs. Each party will bear his own costs.

Dated, signed and delivered this 9th day of April, 2015.

H.I. ONG'UDI

JUDGE

In the presence of

Mr. Ong'anyi for Appellant – present

Mr. Koko for Respondents – present

Lagat – Court Assistant