



COPY

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 146 OF 2011

SALOME DINGIRIA

WISDOM N. DINGIRIA (as the personal representatives of the late

ALEXANDER DINGIERIA APPELLANTS

- V E R S U S -

HERBERT NGISIANGE MUHINDI RESPONDENT

JUDGEMENT

[1] The parties herein lived on a piece of land, that they did not quite identify. Their dispute attracted the attention of the then area Chief Leishanila. He advised the parties to file a case before the area District Officer. A case was duly filed and the parties to the suit took part. The proceedings are mainly an analysis of the history leading to that occupation. The D.O and Chief went to the same and found that the land was not trust land but private land. They tried to reconcile the parties to no avail. later many witnesses gave evidence and the Land Dispute Tribunal gave its verdict.

[2] The verdict merely says that this land was parcel LR. Plot Numbers 1192 and 1188. That the dispute was subject to High Court Civil suit No. 233 of 1994. Further that the various people 118 of them had brought a suit for adverse possession on those plots and that the defendant was not one of them. The tribunal says that, that case was decided by the High Court and according to the tribunal they did not want to interfere with the High Court judgment and that Herbert Ngisiange Muhindi is the owner. From the decision therein, it is clear that the tribunal was saying that it had no jurisdiction as the High Court had decided on the matter.

The Provincial Appeals Tribunal confirmed the award of the tribunal and dismissed the appeal.

[3] I really cannot see the basis of this appeal. It is not argued that the land dispute was not LR. Nos. 1192 and 1188 in which the High Court had made a determination. it is also not argued that the appellant was one of the parties or applied to be joined in that High Court case. it should be understood that the tribunal was composed of laymen. The desirable thing would have been for them to say from the outset that they had no jurisdiction in a matter heard by High Court instead of hearing the case and arriving to such a verdict. But what prejudice did this cause to the parties, I cannot find any.

I must say I find no merit in this appeal. The same is dismissed with each party to bear their own costs.

Dated and delivered in open court at Mombasa this 14th day of February, 2014.

S. MUKUNYA

JUDGE

14.2.2014

In the presence of:

Nyamboye Advocate for Katete Advocate for respondent.