



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CIVIL APPEAL NO. 100 OF 2010

*(An Appeal Against The Decision Of The Provincial Land Disputes
Appeals Tribunal At Kakamega Affirming The Earlier Award From
Matungu Land Disputes Tribunal Adopted By The Chief Magistrate's
Court At Kakamega Vide Award No. 149 Of 2007)*

MICHAEL MUKHOPI)

FRANCIS JOMO OLUNGA)

REUBEN OLUNGA OTIKO)..... APPELLANTS

VERSUS

HEZRON CHARLES LUTTA RESPONDENT

JUDGMENT

This matter commenced in the Matungu Land Disputes Tribunal, as Tribunal Case No. MTG/10/2007. At the end of the hearing of the Tribunal's case, the Land Disputes Tribunal ordered that –

- “1. The court influenced by the observations feels that it has been proved beyond doubt that Charles Luttabought the 2½ acres claimed and his son, the claimant should be given the land.**
- 2. The claimant Hezron Charles Lutta should be included in the Succession cause, when the objectors go for it.**
- 3. The claimant should be let free to use the land immediately.**
- 4. Parties bear their own costs.**
- 5. Right of appeal within 30 days.”**

The appellants were aggrieved by the above decision of the Tribunal. They filed an appeal in the Provincial Land Disputes Appeals Committee. The appeal was registered as No.172 of 2007. After considering the matter, the Provincial Appeals Committee dismissed the appeal stating as follows -

- 1. The appeal is dismissed for lack of fresh evidence.**
- 2. The Matungu Land Disputes Tribunal's decision stands as ordered.**
- 3. In the event the appellants fail to comply, the Executive Officer of the court is directed to sign transfer documents for 2 ½ acres of land.**

The appellants again, appealed. This is the present appeal filed in 2010. The grounds of appeal are
3. They are as follows -

1. **The Elders in the Provincial Land Disputes Appeals Tribunal erred by upholding a decision sought to enforce specific performance of an alleged land sale transaction which had become void and subsequently time barred in contravention of the provisions of the Land Control Act, the Limitation of Actions Act, and the Land Disputes Tribunal's Act 1990.**
2. **the elders in the Provincial Land Disputes Appeal Tribunal erred in law by upholding a decision that had been made by the lower Tribunal on the inconclusive plea of adverse possession without jurisdiction and contrary to the provisions of the Land Disputes Tribunal's Act, the Registered Lands Act and the Civil Procedure Rules.**
3. **The elders in the Land Disputes Tribunal erred in law by upholding the decision of the claimants who lacked capacity to agitate claims for specific performance of an alleged contract on behalf of the deceased father without first obtaining grant of letters of administration.**

The appellants through their counsel M/S Wanyama & Company advocates filed written submissions initially on 1st October, 2013 and subsequently on 26th February 2014. The respondent on their part through their counsel, M/S Kiveu advocate filed their submissions on 1ST November, 2013. On the hearing date, Mr. Kundu who appeared for the appellants and Mr. Vandanga for the respondent adopted the written submissions filed. I have perused the submissions filed and the authorities relied upon.

The jurisdiction of the Land Disputes Tribunals is provided for under Section 3 of the Land Disputes Tribunal Act (Cap 303A) (now repealed). Section 3 (1) of the Act provides as follows -

“S.3 (1) Subject 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.”***

The above provisions of the law are clear. The jurisdiction of the Land Disputes Tribunal is limited. The Tribunal can only deal with division of or determination of boundaries to land. It can also deal with a claim to occupy or work land, or trespass to land.

The Tribunal in the present matter decided matters which related to a purchase. It also determined the size of the land purchased. It also gave orders on specific performance. Those orders of the Tribunal went beyond their powers. In effect, the decision of the Tribunal which was upheld by the Provincial Appeal Committee was illegal. It was null and void.

It has also been argued for the appellants that the respondent did not have letters of administration before going to the Land Disputes Tribunal to start proceedings in the place of his deceased father.. That such was a mistake. That the respondent needed to get letters of administration first before having audience in the Tribunal as well as the Provincial Appeal's Committee.

I have been referred to the case of ***Fred Nyongesa Osolo -vs- Prof. Agolla Auma Osollo – Busia Civil appeal No. 24 of 2002 (unreported)***. Indeed in that appeal, the court considered the issue of *locus standi* of a person going to court in the place of a deceased person before obtaining letters of administration. The respondent's counsel herein does not deny that his client did not have letters of administration when he commenced proceedings. He has argued however that a consent by advocates of the parties was recorded that the award of the Tribunal be adopted as the judgment of the court. That such consent made the judgment final and the same cannot be challenged afterwards on appeal.

It appears not to be disputed that the respondent did not have letters of administration when he instituted the proceedings in the Tribunal. A recorded consent by parties or their counsel, is not sustainable if it contravenes the law.

Indeed, in the case of **Fred Nyongesa Osolo -vs- Prof. Agolla Auma Osollo** (supra), the court cited with approval the case of **Trouistik Union and Ingrid -vs- Jane Mbeyu [Civil Appeal No.145 of 1990] (unreported)** in which the Court of Appeal held that one had to obtain letters of administration to have a **locus standi** to institute or defend a legal action in respect of the estate of a deceased person. The respondent herein brought proceedings in the Tribunal after his father had died. He did not obtain letters of administration in the estate of his father before starting the proceedings. Though his counsel blames Charles Olunga for not obtaining letters of administration early enough in the estate of Jomo Olunga the seller, that is not the issue. For the respondent to have *locus standi* to bring the proceedings, he should have first obtained letters of administration in the estate of his late father Charles Lutta. He did not do so. His failure to do so means that he did not have any capacity to stand in the shoes of his late father and bring the proceedings at the Tribunal. Such proceedings brought by an incompetent person are void. For that reason also this appeal will succeed.

For the above reasons, I find merits in the appeal. Same is allowed. However, I order that each party bears their respective costs, as the issues raised relate to the actions of both parties deceased parents.

Dated and delivered at Kakamega this 12th day of June, 2014

George Dulu

J U D G E