



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT BUNGOMA

Civil Appeal 36 of 2003

MOSES BANDA STEPHEN WAFULA APPELLANT

VRS

CONSTANT MUCHUMO MUCHOE RESPONDENT

JUDGMENT

The Appellant, Moses Banda Stephen Wafula appeals against the decision of Western Province Land Disputes Appeals Committee as adopted by the BGM SPM as judgment of the court on 22.4.2003. He appeals against the whole decision relying on the following grounds:

- 1. The appeals committee erred in law and in fact in upholding the decision of the Kimilili Land Disputes Tribunal in that, it failed to discern that the dispute in the appeal before it had been originated by a person without any locus standi.*
- 2. The appeals committee erred in law and fact in upholding the decision of the Kimilili Land Disputes Tribunal in that, it failed to discern that the dispute in the appeal before it was in essence a succession matter which the tribunal had no jurisdiction to entertain but which could only be properly handled by the court in the Probate and Administration Court.*
- 3. The appeals committee erred in law and in fact in upholding the decision of the Kimilili Land Disputes Tribunal in that, the matter in issue was res judicata having already been dealt with by the Probate and Administration Court.*
- 4. The appeals committee erred in law and in fact in that it should not have entertained a matter affecting title to land.*

Mr. Khakula represented the Appellant and submitted that the appeals committee erred in law and fact in upholding the decision of Kimilili Land Disputes Tribunal, which tribunal lacked jurisdiction to arbitrate on the matter. The committee failed to appreciate that the dispute was a succession matter which it had no jurisdiction to entertain and which could only be properly handled by the a probate and administration court . He further submitted that the Respondent Constant Muchumo Muchoe had *locus standi* to bring such a claim in his capacity as the chairman of the clan. The Respondent was neither an administrator of the deceased's estate or a defendant of the deceased. Section 3(1) of the Land Disputes Tribunal confers upon the tribunal jurisdiction to arbitrate on various matters save Probate and Administration.

The tribunal arbitrated on succession cause which was still pending before the court of law.

Mr. Areba for the Respondent opposed the appeal on ground that the record of appeal did not contain a decree or an order appealed against as required by O.XLI r.1A. He also submitted that there is no law that had been cited by the Appellant to show that committee had no jurisdiction and that the particulars of the Probate and Administration Cause in court was not cited. This leads to a conclusion that no succession costs in respect of the matter in issue was pending before any court of law.

I have perused the proceedings of Kimilili Land Disputes Tribunal and made some observations. The Respondent Constant Muchumo Muchuo told the tribunal that he was the chairman of the Balako clan and which the deceased Erasto Wemela Nasombi belonged. The deceased died in the year 1956 and left behind six (6) sons. The Respondent claimed that one Moses Wafula caused the land of the deceased to be registered in his name in 1995. The Respondent asked the tribunal to order that, the said land be registered in his name to hold in trust for the six (6) sons of the deceased. The tribunal ordered that the land be transferred to the Respondent who would in turn allocate it to the beneficiaries of the deceased. The tribunal had no jurisdiction to arbitrate on the matter for two reasons. Firstly, it is clear from its proceedings that the land was registered in the name of a deceased person which called for succession proceedings by the beneficiaries of the deceased. Secondly, the land was registered under Registered Land Act Cap.300. The jurisdiction of the tribunal is provided for under section 3(1) of the Land Disputes Act which confers upon it the power to arbitrate upon the following orders:

- a) *The division of and determination of boundaries*
- b) *A claim to occupy of work on land*
- c) *Tress passed land.*

The claim before the Kimilili Land Disputes Tribunal does not fall under section 3(1) of the Act and as such, the tribunal had no jurisdiction to arbitrate on the said claim. The Appellant appealed to the Western Province Appeals Committee against the decision of the Kimilili Land Disputes Tribunal and the committee proceeded and determined the appeal. The jurisdiction of the appeals committee is derived from section 3 (1) of the Act. It therefore follows that, where the tribunal lacked jurisdiction, the appeals committee was also dispossessed of jurisdiction to hear the appeal. The appeals committee therefore acted *ultra vires* in hearing and determining the appeal. The matter was purely a succession one and ought to have been arbitrated upon by a court of law which was possessed of such jurisdiction. It is therefore immaterial whether or not a succession cause was pending in any court at the time that the tribunal arbitrated on the matter.

The issue of a decree of order appealed against missing from the records of appeal was raised by the counsel for the respondent. I have perused the record of appeal and confirmed that there is no decree of the decision of the Provincial Land Disputes Appeals Committee. However, the verdict of the committee dated 10th of May, 2002 is contained in the record of appeal and duly signed by the Chairman and the members of the committee. It will not be expected that the said committee which is not a court of law issues decrees. The record of the verdict duly executed by the members is sufficient for the purposes of order LX1r.1A.

It is my finding that, the Appellant has satisfied the court that the Western Province Appeals Committee erred in law and in fact by confirming the decision of Kimilili Land Disputes Tribunal which had been made by a body that lacked jurisdiction. The award of the tribunal was null and void for lack of jurisdiction. The act of confirming the said award is also a nullity. I am satisfied that, the Appellant has satisfied the court on the grounds of appeal and the appeal must succeed. Each party to meet their own costs of the appeal.

F. N. MUCHEMI

JUDGE

Dated, Delivered and Signed at Bungoma

This 8^t day of July 2009 in the presence of Mr. Areba for respondent.