



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**MISC. CIVIL APPLICATION NO. 40 OF 2016**

**PANTALEO MWASAMBO SAMWEL.....APPLICANT**

**-VERSUS-**

**ELIZABETH ANDREA & OTHERS**

**MARYANNE MWAMBURI & OTHERS.....RESPONDENTS**

**JUDGEMENT**

1. The appellant herein is dissatisfied with the whole of the judgement and decision/award made by the Provincial Land Appeals Committee Coast made on 21<sup>st</sup> September 2010 in land appeal case No 119 of 2000. The Appeals Committee held that after consideration of the facts it awarded the disputed land at Mwanda Location to the Respondents. The appellant, his family or agents were ordered to vacate the suit land. The Appeals Committee thus upheld the decision of the District Land Tribunal Wundanyi Division, Taita.

2. This award was adopted as the decree of the Court on 26<sup>th</sup> May 2015 by the Honourable Orege J. I, SRM Wundanyi Law Courts. The appellant sought leave to appeal out of time which leave was granted by this Court on 28<sup>th</sup> February 2018 and the memo of appeal that had been filed out of time was deemed as properly filed on time.

3. The appellant in his memo of appeal dated 3<sup>rd</sup> November 2016 listed 4 grounds of appeal as follows:

**1. That the Hon. trial Magistrate erred in law and fact and allowed the matter to proceed fully for hearing only to wrongly dismiss the suit for lack of jurisdiction where there was no such an issue raised by either party in the entire proceedings.**

**2. That the honourable trial Magistrate erred in law and fact and failed to find that the only prayer in the suit was for permanent injunction which the honourable Court had jurisdiction to grant.**

**3. That the honourable trial Magistrate relied on earlier findings by a Kangaroo Court which was highly violated, comprised and acted in bad faith against my rights to the suit property.**

**4. That the honourable trial Magistrate erred in law by deciding the matter on technicalities of the law contrary to the spirit of the law and provisions of the Constitution.**

4. The appellant therefore urged the Court to allow his appeal and re – instate the suit. He also prayed for orders of permanent injunction to issue against the Respondents restraining them from trespassing on the suit property. The appellant prayed that he be awarded the costs of this appeal.

5. During the hearing of the appeal, the parties who were all unrepresented argued the appeal orally on 15<sup>th</sup> October 2018. The appellant submitted that he got the suit land from his forefathers. That the Appeals Committee did a mistake because they were all asking him questions and that the Committee felt he had no respect for the Court. The appellant submitted that the area Chief kept interfering with the case by writing letters to the Appeals Committee. Lastly the Appellant stated that during the hearing of his appeal his questions were not answered by the persons the question was directed to. He added that the land in that area has not been demarcated.

6. The 1<sup>st</sup> Respondent in reply submitted that the land in dispute belongs to his great grandfather. That the appellant has his land across the road. That the Tribunal found that he should not cross the road. That the appellant has not given any grounds why the Tribunal's award should be set aside. The 1<sup>st</sup> Respondent stated they do not share a common boundary with the appellant as the two plots are separated by a road.

7. The 2<sup>nd</sup> Respondent submitted that Mzee Mwamburi who lived on the suit land had never been asked to vacate. That the Respondents belong to the Mwanda clan where the land is while the Appellant is from the Mgange clan. That the appellant cannot claim land on the Mwanda side unless by purchase. He urged the Court to dismiss the appeal.

8. The appellant in reply to the Respondents submissions stated that Mwamburi came on the land in 1990 while Andrea came in 1995 having been brought by people armed with pangas. That the representatives of the Respondents had no history of the land. He urged the Court to allow his appeal.

9. This is a second appeal and by law, only issues of law should have been raised. The appellant in the grounds of appeal pleaded that the trial magistrate struck out his suit for want of jurisdiction. However this is not true as from the proceedings, the magistrate's role was only to adopt the award of the Provincial Lands Appeal Committee which he did. Secondly the Appellant stated that the chief of their area wrote to the Committee each time the matter came for hearing before the Tribunal. That these letters might have influenced the decision of the Committee. Nowhere in the proceedings before committee is there a reference to a chief's letter. The appellant himself made generalisations of such letters if at all they existed and none was in the Tribunal's file.

10. The Respondents in their submissions stated that this land is within the Mwanda clan while the Appellant comes from the Mgange clan and that there is a road separating the appellant's land and the suit land. The appellant other than stating that the sons of the Respondents who represented the Respondents during the hearing hereof did not have a history of the suit land, failed to state whether it was true or not the submission that suit land is in Mwanda clan where he does not belong to.

11. The appellant thus failed and or neglected to point out the mistakes made by either the District Land Disputes Tribunal or Provincial Lands Appeals Committee in awarding the land to the Respondents. The appellant thus failed to show any merit in his appeal to warrant the setting aside of the award/decreed. The result of his failure is that the appeal is dismissed for lacking in merit with an order that each party to meet their costs of this appeal.

12. This Court upholds the Appeals' Committee decision that the appellant is ordered to forthwith desist from interfering with the Respondents' use and occupation of the suit land.

**Dated, signed & delivered at Mombasa this 15<sup>th</sup> February 2019**

**A. OMOLLO**

**JUDGE**