



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC APPEAL NO. 5 OF 2017

(FORMERLY HCCA 5 OF 2012)

LUCAS GAWO OSIR.....APPELLANT

VERSUS

PETER SADIA ONIANG'O.....RESPONDENT

JUDGMENT

1. Lucas Gawo Osir, hereinafter referred to as Appellant has appealed from the award in Kisumu West District Land Tribunal Case number 16 of 2010 as adopted by Hon H. Adika, Resident Magistrate in Kisumu CM.C.C Civil Case number 89 of 2011 on grounds that:-

- 1. That the Honourable tribunal erred in law and in fact when it found that the succession documents were fraudulent by failing to show the mechanism it applied on arriving at the said conclusion.**
- 2. The Honourable Tribunal erred in law and in fact when it failed to consider that the statements in the proceedings and documents presented before it were contradictory in nature i.e the date the suit property was registered and the date Mr. Sadia died.**
- 3. The Honourable Tribunal erred in law and fact when it failed to prove who registered both the names of the Appellant's and Respondent's fathers in the suit property and who gave out the green-card and how it was accessed.**
- 4. The Honorable Tribunal erred in law and in fact when it unknowingly or knowingly failed to cross-examine the objector for it to establish whether the minuted statements were truly his or not.**
- 5. The finding of the Tribunal was not supported by evidence or facts but by pure biasness since the composition of the arbitrators in which some were either hailing from the same locality as the complainant or having a very close family relationship with.**
- 6. The finding is against the weight of evidence and law.**

2. The Appellant prays for orders:-

a) The appeal be allowed.

b) The award in Kisumu West District Land Tribunal case number 16 of 2010 as adopted by H. Adika Resident Magistrate in Kisumu CMCC Misc. Civil case number 89 of 2011 be set aside.

The appellant wants the property in dispute to be distributed equally so that everybody gets half share.

3. The Respondent argues that the Tribunal had Jurisdiction and arrived at the right decision.

4. I do find that the decision of the Tribunal made on 26th October 2011 and adopted on 16th December 2011 did not determine a boundary dispute, right to occupy and work on land and/or trespass but the elders advised the High Court to carry out investigations as to the ownership of title.

5. The decision of the Tribunal is a nullity as it does not address the issues before it and was made ultra vires its mandate as provided for in Section 3 (1) of the Land Dispute Tribunal Act (repealed).

6. It is hereby ordered that the award in Kisumu West District Land Tribunal case number 16 of 2010 as adopted by H. Adika Resident Magistrate in Kisumu CMCC Misc. Civil case number 89 of 2011 be and is hereby set aside. Each part to bear costs as this is a family dispute. Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 27th DAY OF **September, 2019.**

In the presence of:

Appellant Lucas Gawo Osir

Respondent Ariho (advocate)

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE