



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC APPEAL CASE NO. 5 OF 2015

AGNESS SHIYENZI SHIKONDI

MARGARET LIHAVI LIPEYA.....APPELLANTS

VERSUS

TIMOTHY S.L. MULAMULA.....RESPONDENT

JUDGEMENT

The appellants having being dissatisfied with the verdict of the Western Provincial Land Disputes Tribunal dated 8th October 2008 wishes to appeal from the same on the following principal grounds;

1. That both the Shinyalu Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Tribunal lacked jurisdiction to entertain the claim of the parties.
2. The Western Provincial Land Disputes Appeals Tribunal failed to analyse the evidence adduced before it properly and hence arrived at a wrong decision.
3. That the proceedings of both the Shinyalu Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Tribunal were flawed, inconsistent and failed to meet the basics of a fair and just hearing.

The Appellants pray that their appeal be allowed and the findings of both the Shinyalu Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Tribunal be quashed with costs to themselves.

The appellants filed the appeal herein after they were granted leave to file an appeal out of time vide Kakamega High Court Misc. Civil application number 10 of 2009 see pages 22 to 27 of the record of appeal.

On ground number one they submit that both the Shinyalu Land Disputes Tribunal and the Western Land Disputes Appeals Tribunal lacked jurisdiction to entertain the claim of the parties since the dispute was in regard to the estate of a deceased person which should be handled by a succession court.

On ground number two they submit that both the Shinyalu Land Disputes Tribunal and the Western Land Disputes appeals tribunal failed to analyze the evidence before itself and hence arrived at a wrong finding. The tribunal failed to appreciate that the dispute related to the estate of a deceased person. Further it failed to recognize that both parties were beneficiaries to the estate and hence gave orders favouring one beneficiary and left out other beneficiaries.

On ground number three they submit that both the Shinyalu Land Disputes Tribunal and Western Provincial Land Appeals Tribunal failed to meet the standards of affair and just hearing since it failed to give both parties fair chances to argue their cases. Looking through the proceedings of both tribunals, the parties were cross-examined by the tribunal to extract information from the parties instead of giving the parties time to argue their cases.

In conclusion they submit that the tribunal went beyond its jurisdiction to hear and determine an issue preserved for a succession court. For the above reasons they pray that the court do set aside the verdict of the Western provincial land appeals tribunal. They pray that the appellant's appeal be allowed with costs to the appellants.

The respondent was served but failed to attend court or file any papers and the appeal proceeded unopposed. This court has carefully

considered the appellant's submissions. This appeal is premised upon the memorandum of appeal dated 29th June, 2009 which raises three grounds, the preliminary issue in my view which is for determination is the jurisdiction of these tribunals. On ground 1 of the appeal, the operative law was the Land Disputes Tribunal Act (now repealed). Section 3 of the Act stipulated as follows-

“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.”

In this case, the tribunal meandered beyond its boundaries. In **M'Marete v Republic & 3 others, Court of Appeal, Nyeri, Civil Appeal 259 of 2000 [2004] eKLR** the court held-

“In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupancy or work the land, but a claim to ownership. Taking into account the provisions of section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land registered under [the] Registered Land Act to the appellant. In our view, the Tribunal acted in excess of its jurisdiction.”

The tribunals in the present case dealt with title or ownership to property. It found that the objectors were owners of the suit land. The dispute between the parties before the Shinyalu Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Committee was essentially a claim to ownership over the land. The the Western Provincial Land Disputes Appeals (the Committee's ruling at page 30 of the Record of Appeal) in reversing the decision of the the Shinalu Land Disputes Tribunal held that;

1. The appeal is allowed.

2. The Shinyalu Land Disputes Tribunal court ruling is revoked.

3. Land parcels Isukha/Mukhonje/1304 of 2.225 HA and Isukha/Mukhonje/1305 of 2.54 HA be transferred and registered to the objectors Margaret Lihavi and Agnes Shiyenzi in accordance intestacy forms LR 7 dated 3/7/2003 immediately.

4. The parties to maintain peace.

For those reasons, I find that the proceedings and decision fell well outside the jurisdiction of the Shinyalu Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Committee. The proceedings prima facie violated the Land Disputes Tribunal Act (now repealed). In the case of Masagu Ole Naumo v Principal Magistrate Kajiado Law Courts & another, Nairobi, High Court, JR 370 of 2013 [2014] eKLR. In that case, Odunga J held as follows-

“In my view the view that the Tribunal had no powers to deal with registered land is incorrect. What the Tribunal was prohibited from undertaking is a determination with respect to title to land”.

The provisions of section 3 (1) of the Land Disputes Tribunal Act No. 18 of 1990 are very clear on what matters these tribunals had jurisdiction over claims of title to registered land is not one of the matters that can or could be laid in these tribunals and the Shinyalu Tribunal was wrong to register and hear pass judgment and make orders on the appellants claim for him for the title to the suit land. Again, the Provincial Land Disputes Appeals Committee was wrong in revoking the tribunal's verdict as the tribunal had no jurisdiction to hear or pass judgment on a claim of title to land. Having found this there will be no need to go into the merits or demerits of the composition or proceedings in the tribunals as they never had jurisdiction in the first place. I find that this appeal has merit and I allow the same. I quash the decision/verdict of the Shinyalu Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Committee with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 12TH DAY OF JULY 2018.

N.A. MATHEKA

JUDGE