



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**CIVIL APPEAL NO. 52 OF 2003**

**JOSEPH INDECHE KHAMALULI :::::::::::::::::::::::::::::::APPELLANT**

**VERSUS**

**TOM SERU ACHESA :::::::::::::::::::::::::::::::RESPONDENT**

**JUDGMENT**

The appellant brought this appeal as against the respondent on the following grounds:

1. The Provincial appeals committee erred in deciding the appeal without giving parties opportunity to make submissions.
2. The Provincial Appeals Committee erred in making contradictory findings.
3. The Provincial Appeals Committee erred in entertaining the respondent’s appeal which had been filed out of time.

The appellant submitted that the Provincial Appeals Committee erred in deciding the appeal without giving parties an opportunity to submit as required by the law. The proceedings at the Provincial Appeal Committee were contrary to the Provision of Section 8 (7) of the Land disputes Tribunal Act as parties were only allowed to produce document, and as such the appellant has not given an opportunity to state his case. That the Provincial Appeals Committee erred in making contradictory findings. That the Provincials Appeals Committee erred in entertaining an appeal filed out of time. No leave was sought for the respondent herein to appeal the decision of the Ikolomani Arbitration Board out of time.

This was against the provisions of section 8 (1) of the Land Disputes Tribunal Act the section in part states;

***“8 (i) ..... Any party to a dispute under section 3 who is aggrieved by the decision of the tribunal may, within thirty days of the decision, Appeal to the Appeals Committee .....”***

The decision of the Tribunal was delivered on the 22<sup>nd</sup> day of April, 1997, while Appeal was filed on the 22<sup>nd</sup> May 2001, which was out of the stipulated time when one is to lodge an appeal. That this is against the Provision of the Act was and as such they humbly pray that the appeal herein be allowed as prayed for, with costs to the appellant.

The respondent submitted that the Provincial Appeals Committee had the mandate to entertain the land dispute herein between the parties herein as provided under section 3 and 4 of the repealed Land Disputes

Act No. 18 of 1990. Both parties were offered opportunity to be heard. They urged the court to dismiss the appeal herein with costs to the respondent.

I have carefully perused the court record and considered the the submissions therein. On ground one that the Provincial appeals committee erred in deciding the appeal without giving parties opportunity to make submissions, I have perused the proceedings in the Provincial appeals committee which are on record. It was observed that both parties were present and the record was read and confirmed. No new evidence was adduced from either party. The findings were that the appellant therein Tom Seru Achesa produced all the necessary documents to show the land is his property. The respondent Joseph Indeché on the other hand could not do so to prove his claim. The final order was that the boundary is to remain as it is on the official map. The appeal was allowed and either party was to meet its own costs. I find that the issue here is not that parties were not allowed to submit but that they had no new evidence to adduce except for the documentation and hence the proceedings as captured are in order.

On ground two of the appeal that the Provincial Appeals Committee erred in making contradictory findings, the appellant has not shown where the error is bearing in mind the committee had the documentary evidence to make their finding and the respondent had none.

On ground three of the appeal that the Provincials Appeals Committee erred in entertaining an appeal filed out of time. That no leave was sought for the respondent herein to appeal the decision of the Ikolomani Arbitration Board out of time.

This was against the provisions of section 8 (1) of the Land Disputes Tribunal Act the section in part states;

***“8 (i) ..... Any party to a dispute under section 3 who is aggrieved by the decision of the tribunal may, within thirty days of the decision, Appeal to the Appeals Committee .....”***

The decision of the Tribunal was delivered on the 22<sup>nd</sup> day of April, 1997, while Appeal was filed on the 22<sup>nd</sup> May 2001, which was out of the stipulated time when one is to lodge an appeal. I find that the operative word here is **may** and the committee was at liberty to hear the matter even if the same was filed out of time. The respondent then/appellant now, ought to have raised this objection before the committee and before the hearing of that appeal for them to make a determination.

In *Mwanasokoni v Kenya bus Service* (1982 - 88) 1 KAR 870, it was held that this court is duty bound to revisit the evidence on record, evaluate it and reach its own decision in the matter. This court however, appreciates that an appellate court will not ordinarily interfere with the findings of fact of the trial Court unless they were based on no evidence at all, or on misapprehension of it or the court is shown demonstrably to have acted on wrong principles in reaching the findings. I find that the decision was judiciously arrived at and I will not interfere with the same. I find no basis to interfere with the award as it was based on cogent evidence. This appeal is dismissed for lack of merit. The Appellant to meet the costs of the appeal.

It is hereby ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 27<sup>TH</sup> DAY OF JULY 2017.**

**N. A. MATHEKA**

**JUDGE**