



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT OF KENYA

AT MALINDI

CIVIL APPEAL NO. 48 OF 2010

MPENZWE NGOBA MTANA

BIJUMA NGOBA MTANA (*suing as the administrator/Legal representative of the estate of the late DON MAURICE MUTANA*).....

.....**APPELLANTS**

=VERSUS=

ZUHURA

SHABANA.....**RESPONDENT**

J U D G M E N T

Introduction

1. What is before me is an appeal from the Judgment of the Provincial Land Appeals Tribunal at Mombasa in Land Appeal Number 373 of 2005. The Provincial Land Appeal Committee was mandated to deal with appeals from the District Lands Disputes Tribunals which were established pursuant to the repealed Land Disputes Tribunal Act, Cap 303 A.
2. According to the Memorandum of Appeal, the Tribunal failed to satisfy itself whether it had jurisdiction and proceeded to adjudicate upon the dispute without jurisdiction; that the Tribunal erred in law by failing to make a finding that the Bahari Land Disputes Tribunal lacked jurisdiction to deal with the dispute that was before it and that the Tribunal did not hear the appeal before it but proceeded to hear the matter *de novo*.

The Appellant's case:

3. The Appellant's counsel filed his written submissions on 17th December 2013. According to counsel, the dispute in issue in this matter revolved around the ownership of Tezo/Roka/977 (the suit property). Counsel submitted that the Tribunal and the Appeals Committee lacked the jurisdiction to entertain the dispute before them and that the decision by the two bodies was a nullity.
4. The Appellant's counsel submitted that the suit property having been registered under the repealed Registered Land Act, the only avenue that was available to the Defendant was an action in the High Court or the Magistrate's Court as provided in section 159 and not before the Tribunal.

Counsel relied on a number of authorities to buttress his argument which included **Dominic Wamuyu Kihu Vs Johana Nduna Civil Appeal No.269 of 2007** and my decision in **Fauzia Tariz Zubedi Vs Athman Awadh & Others, Malindi Petition No. 6 of 2011.**

The Respondent's Submissions

5. The Respondent's advocate has submitted that this appeal was filed on 27th September 2010, which was over one year since the Ruling of the Land Appeal number 373 of 2005 was delivered; that the Appellant did not seek the leave of the court to file the appeal out of time and that the same should be dismissed with costs. Counsel relied on the Court of Appeal decision in **Civil Appeal Number 228 of 2010, Alice Wambui Karanja Vs Jacinta Wairimu Njoroge.**
6. On the issue of jurisdiction, counsel submitted that the Appellant should have raised the issue of jurisdiction at the earliest opportunity to enable the court to deal with the same and not at this stage.

Analysis and findings:

7. Before considering the legal issues in the Appeal, I have to determine whether this appeal was filed within time.
8. Section 8(a) of the repealed Land Disputes Tribunal Cap 303 A provided **that either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of provided that no appeal shall be admitted to hearing by the High Court unless the judge of that court has certified that an issue of law is involved.**
9. The decision of the Land Appeals Committee was delivered on 21st September 2009 by the Chairman and two other members. The said decision is handwritten. The Appellant had the said handwritten decision certified as a true copy of the original on 21st September 2010.
10. The Memorandum of Appeal in respect to the decision of the Appeals Committee was filed in this court on 27th September 2010, one year after the decision of the Appeals Committee without the leave of the court. It is not true, as submitted by the Appellant's advocate that the Appeals Committee heard the appeal on 20th May 2010 and delivered its decision on 21st September 2010 and that while the Appellant was waiting for the decision, he died on 23rd August, 2010.
11. Even if the Appellants' father died before the Appeals Committee delivered its decision, which is not true, it was incumbent on the Appellants to seek the leave of the court to file the Appeal out of time.
12. In view of the fact that the appeal herein was filed out of time without the leave of the court, I shall, which I hereby do, strike out the appeal with costs.

Dated and delivered in Malindi this 28th Day of **March, 2014**

O. A. Angote

Judge