



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CIVIL APPEAL NO. 16 OF 2007.

EMMANUEL JACOB PKERIO ::: APPELLANT.

VERSUS

MENGICH TULIAMUK)

KASIKAR LOITARENG) ::: RESPONDENT.

J U D G M E N T.

This appeal arises from the award of the Rift Valley Provincial Appeals Committee in Land Adjudication Case No. 72 of 2006 which award was read and adopted as a judgment of the court on the 23rd July, 2007 in Kitale Land Case No. 86 of 2006.

In effect, the committee determined that the boundary shown by the demarcation committee in 1965 be followed and that the title issued be reviewed and its genuineness be determined by the Land Registrar West Pokot.

The decree issued by the Magistrate's court was that the Land Registrar West Pokot do review the title issued so that the boundary shown by the demarcation committee in 1965 be followed.

Being aggrieved by the award and decree, the appellant, **Emmanuel Jacob Pkerio**, filed this appeal against the respondents, **Mengich Tuliamuk** and **Kasikar Loitareng**, on the basis of the grounds contained in the memorandum of appeal dated 20th August, 2007.

With the consent of the parties, this court directed that the appeal be argued by way of written submissions.

In that regard, the appellant's written submissions were filed on 29th April, 2013 by **Risper Arunga & Co. Advocates**, while the respondents' submissions were filed on 4th November, 2013 by **Samba & Co. Advocates**.

In his submissions, the appellant abandoned grounds one (1) to four (4) of his grounds of appeal and opted to rely on ground five (5) only. The appellant thus contends that the tribunal erred when it ordered rectification and/or cancellation of a first registration, which legally could not be done, and when they had no jurisdiction.

The appellant submitted that the appeal committee was to determine a boundary dispute but instead made findings regarding a title deed when it stated that the District Land Registrar West Pokot do review the title issue and its genuineness.

The said title deed forms part of the record of appeal.

In essence, the appellant's argument is that the appeals tribunal had no jurisdiction to order a rectification and/or cancellation of a title deed.

The respondents did not address the foregoing issue in their submission and instead dealt on the propriety and competence of the appeal in as much as it was filed out of time and without the leave of the court.

The respondents contend that the appeal committee made its decision on 19th June, 2007 yet the appeal had not been heard as at 17th August, 2007 i.e. within sixty (60) days from the date of the disputed decision.

This court, having considered both submission and with regard to the appeal's conference, it is notable that the decision of the appeals committee was rendered on the 19th June, 2007 after which any aggrieved party was given sixty (60) days to appeal to the High Court.

The decision was adopted as a judgment of the court on the 23rd July, 2007. The right of appeal within sixty (60) days was communicated to both parties. This appeal was filed on 20th August, 2007 which was within the stipulated period of appeal from the 23rd July, 2007 when the decision of the appeals committee was adopted as an order or judgment of the court.

The appeal is therefore competent before this court and even if it was filed belatedly by three or more days, the omission would amount to a procedural defect which would be curable by necessary leave if not under Article 159 (2) (d) of the Constitution of Kenya, 2010.

With regard to the questioned jurisdiction of the appeals committee, it is evident from the relevant proceedings that what was to be determined was a boundary dispute between the appellant and the respondent.

Such a dispute fell within the jurisdiction of a Land Disputes Tribunal and hence, the appeals committee.

Indeed, the Lelan Lands Disputes Tribunal in Tribunal Case No. 7 of 2005, found that the first respondent had altered the boundaries while the appellant was abroad for further studies. The tribunal indicated that the boundary as determined in the year 1965 be retained in favour of the appellant.

The appeals committee in its decision of the 19th June, 2007, affirmed that the boundary as determined by the demarcation committee in 1965 be retained and be followed to re-create the harmony which previously existed between the appellant and the respondents.

However, the appeals committee went further to order that the title deed issued to the appellant be reviewed by the District Land Registrar West Pokot who was also to determine its genuineness.

In effect, the appeals committee ordered for a rectification and/or cancellation of the existing title deed which conferred absolute ownership of the land to the appellant.

As it were, the order was made in excess of jurisdiction and was therefore null and void “**ab initio**”. It rendered the entire decision of the appeals committee a nullity.

Consequently, this appeal is allowed to the extent that the award of the appeal committee is declared null and void for want of jurisdiction and is hereby set aside.

The appellant shall have the costs of the appeal.

Ordered accordingly.

[Delivered and signed this 1st day of July, 2014.]

[In the presence of Mr. Ingosi for respondent and M/s. Arunga for appellant.]

J.R. KARANJA.

JUDGE.