



**IN THE COURT OF APPEAL**

**AT ELDORET**

**(CORAM: OMOLO, GITHINJI & OKWENGU, J.J.A.)**

**CIVIL APPEAL NO. 203 OF 2007**

**BETWEEN**

**ALBERT MUSSEIN KIBOI**

**PAUL CHESEBE KIBOI**

**LOISE SITATI KIBOI**

**BEN BOYID KIBOI ..... APPELLANTS**

**VERSUS**

**HENRY WEPUKHULU SIMIYU**

**MUNANDA KIDAI ..... RESPONDENTS**

*(An Appeal from the Ruling and Order of the High Court of Kenya at Bungoma (W. Karanja J.)  
dated 18<sup>th</sup> July, 2007*

in

*H.C.C.A. NO. 27 OF 2003)*

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**JUDGMENT OF GITHINJI, JA.**

This is an appeal against the Ruling delivered by the High Court (W. Karanja J. ) on the 18<sup>th</sup> July 2007 in HCCA No. 27 OF 2003 in Bungoma.

The background to the appeal is that the High Court dismissed the appellants' appeal against the decision of the Nalondo Division Land Disputes Tribunal (hereinafter referred to as Tribunal), following a preliminary objection dated 23/9/03 raised by the respondents' herein.

In this appeal the appellants' raised the following grounds of appeal in the memorandum of

appeal against the Ruling of the learned Judge :-

- 1. THAT the learned trial Judge erred in law when she failed to appreciate that indeed an appeal would lie to the High Court against the award from the Land Disputes Tribunal.**
- 2. THAT the learned trial Judge erred in law when she dismissed the appellants' appeal on a technicality.**
- 3. THAT the learned trial Judge erred in law when she failed to appreciate that the appeal before the High Court arose out of an award that had been adopted as judgment of the court and decree drawn.**
- 4. THAT the learned trial Judge erred in law when she failed to allow the appeal to go into full hearing hence occasioning a miscarriage of justice.**

The genesis of this appeal is that a dispute arose between the parties herein over land parcel No. **EAST BUKUSU/NORTH NALONDO/222** resulting in the dispute being filed in the Tribunal by the respondents'. The Tribunal made an award in favour of the respondents' which was allegedly subsequently adopted as a judgment of the Senior Principal Magistrate's court at Bungoma in L.D.T CASE NO. 17 OF 2003. The appellants' herein thereafter filed an appeal in the High Court against the said award.

The respondents' subsequently filed a Preliminary Objection dated 23/9/04 against the appeal in the High Court. The preliminary objection raised two points namely:-

- 1. That the appeal herein is misconceived and does not lie.**
- 2. The court is not seized of jurisdiction to entertain the appeal herein.**

The learned Judge after hearing the preliminary objection dismissed the

appellants' appeal on the grounds that the court had no jurisdiction to entertain the appeal under the Land Disputes Tribunal Act No. 18 Of 1990 (now repealed).

At the hearing of this appeal Mr. BW Onchiri appeared for the appellants' while Mr. J.O Makali appeared for the respondents'. Mr. Onchiri abandoned grounds 2, 3, and 4 in the memorandum of appeal and only argued ground 1.

Mr. Onchiri submitted; that an appeal against an award of the Tribunal which had been adopted as a judgment of the subordinate court does lie in the High Court by virtue of Section 79 of the Civil Procedure Act (Cap 21) and as such an appeal would be against the judgment and decree of the subordinate court; that under section 7 of the Act when an award of the Tribunal is adopted as a judgment of the court a decree would issue which was enforceable in the manner provided under the Civil Procedure Act. He asserted that the appeal that was filed before the High Court was not misconceived and that the learned Judge was wrong to dismiss it.

Mr. Makali in opposition contended firstly, that, there was no evidence that the award issued by the Tribunal was adopted as a judgment of the subordinate court. Looking at the record of appeal it is not clear to me when or whether the award was adopted by the subordinate court. This is because the subordinate court's proceedings dated 20/5/03 indicate that the court stayed the adoption of the award for thirty days. On the other hand the decree extracted from the subordinate court indicates that the award was adopted on the 20/5/03.

Mr. Makali further contended that there was no right of appeal to the High Court against the decision/award of the Tribunal; that the appeals procedure over decisions/awards issued by the Tribunal is set out under Section 8 of the Act; that the right of appeal against the decision of the Tribunal lay in the

Provincial Appeals Committee and that the right of appeal to the High Court could only lie on a point of law arising from the decision of the Provincial Appeals Committee .

The issue in this appeal is whether or not the High Court was right in declining jurisdiction to entertain the appeal.

It is trite law that whenever an issue of jurisdiction is raised, a court of law is bound to determine the same before embarking on the merits of the matter before it . In **Owners of the Motor Vessel 'Lillian S' .v. Caltex Oil (Kenya) Ltd [1989] KLR 1 Nyarangi, JA.** said at page 14 paragraph 20:

**'...i think that its reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it..'**

In this case the learned Judge was correct in first considering the issue of jurisdiction raised by the respondents. The Act governs matters relating to the establishment of the Land Dispute Tribunals, their jurisdiction and the dispute resolution procedure thereunder.

In my view the Act being a special legislation enacted should be construed and applied strictly. ( See **H. Odongo & 6 others .v. Savings and loan society (Kenya) Ltd. Civil Appeal No. 22 of 1987.** (Unreported)

Section 8 of the repealed Act provided for an appeal procedure in sections 8(1) , 8(8) and 8(9) against a decision of the Tribunal as follows:-

**'8(1) 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 constituted for the Province in which the land which is the subject matter of the dispute is situated.**

**8(8) The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.**

**8(9) 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:"**

The decision of the Tribunal which was subject of the appeal in the High Court having been made pursuant to the Act , the High Court was bound to follow the appeals procedure set out. The issue in this appeal was considered in **Humphrey Olwisi Muranda v. Yakobet Nechesa Wabuko (2008) eKLR** where this Court held that it had no jurisdiction to entertain an appeal against the decision of the High Court under the Land Disputes Tribunal Act as the same was not provided under the Act's appeals procedure.

It is clear from the provisions of section 8(9) of the Act that the jurisdiction of the High Court under the Act is limited to appeals on points of law arising from the decisions of the Provincial Appeals Committee. I have no doubt that the High Court had no jurisdiction to entertain an appeal against the decision of the Tribunal by virtue of Section 8(9). The fact that an award of Land Disputes Tribunal is adopted as a judgement of the court does not oust in my view the provisions of the Land Disputes Tribunal Act. The learned Judge did not misdirect herself in dismissing the appellants' appeal in the High Court. In **Owners of the Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Ltd (1989) KLR 1 Nyarangi , JA.** at page 14, paragraph 25 said :

**'.....where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.'**

As Okwengu, JA. Agrees the appeal is dismissed with costs to the respondents. It is so ordered.

This judgment has been delivered under Rule 32(3) of the Court of Appeal Rules as Omolo, JA. is currently performing judicial functions.

***DATED and delivered at Eldoret this 19<sup>th</sup> day of September 2012.***

***E.M. GITHINJI***

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***JUDGE OF APPEAL***

**JUDGMENT OF OKWENGU, JA.**

I have had the opportunity to read in draft the judgment of ***Githinji, J.A.*** and I do agree with it in its entirety. I have nothing useful to add.

***Dated and delivered at Eldoret this 19<sup>th</sup> day of September, 2012.***

**H. M. OKWENGU**

.....  
**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

**DEPUTY REGISTRAR**