



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL APPEAL NO.111 OF 2010

JACK NYONGESA WEKESA.....APPELLANT

VERSUS

CHARLES WALIBWA WEKESA.....RESPONDENT

JUDGEMENT

LUKA W. MUKHALISI WEKESA (as the claimant) and **CHARLES WALIBWA WEKESA** (as the Objector and who is the Respondent in this appeal) were the parties litigating in the **KANDUYI LAND DISPUTES TRIBUNAL** over land parcel No. **E. BUKUSU/E. SANGALO/267**. The said Tribunal rendered its award directing that the said parcel of land be sub-divided into four(4) portions.

The parties were informed of their right to file any appeal within 30 days. That award was adopted as a judgement of the Court in **BUNGOMA SENIOR PRINCIPAL MAGISTRATE'S COURT MISCELLANEOUS APPLICATION NO.71 of 1997** on 11th December 1997.

However, by a strange turn of events, one **JACK NYONGESA WEKESA** (a complete stranger to the proceedings before the **KANDUYI LAND DISPUTES TRIBUNAL** and now the Appellant herein) filed at the **BUNGOMA HIGH COURT MISCELLANEOUS APPLICATION NO.64 of 1998** and on 15th July 1998 was granted orders by **MBITO J** to file an appeal out of time at the **PROVINCIAL APPEALS COMMITTEE** against that award. It is doubtful if such leave could be granted – See **JACINTA PAPA V CHAIRMAN AMAGORO LAND DISPUTES TRIBUNAL C.A. CIVIL APPEAL NO.41 OF 2013 (2014 eKLR)**.

His appeal was however dismissed by the Provincial Appeals Committee on 10th June 2010.

JACK NYONGESA WEKESA was relentless. He moved to this Court and filed this appeal on 20th September 2010 raising four(4) grounds of appeal. The appeal was admitted by **ARONI, J** on 20th November 2013 and has been canvassed by way of written submissions which have been filed by **Mr. OCHARO KEBIRA** for the Appellant and **Mr. PETER KIARIE** for the Respondent.

I have considered the appeal and the submissions by Counsel.

Mr. KIARIE has submitted, and rightly so in my view, that this appeal is incompetent and ought to be struck out because **JACK NYONGESA WEKESA** the Appellant was not a party before the **KANDUYI LAND DISPUTES TRIBUNAL**. That is correct. As I indicated at the commencement of this judgment, the parties at the **KANDUYI LAND DISPUTES TRIBUNAL** were **LUKA W. MUKHALISI WEKESA** (as the claimant) and **CHARLES WALIBWA** (the Respondent herein and who was the Objector in the Tribunal.) **JACK NYONGESA WEKESA**

was not a party in that dispute and therefore he could not mount any appeal to the **PROVINCIAL APPEALS COMMITTEE** let alone seek leave to file this appeal out of time which he gratuitously obtained on 15th July 1998. The dispute before the **KANDUYI LAND DISPUTES TRIBUNAL** and the appeal to the **PROVINCIAL APPEALS COMMITTEE** was governed under the provisions of the then **LAND DISPUTES TRIBUNAL ACT (CHAPTER 303A LAWS OF KENYA – now repealed)**. Section 8(1) of the said Act provided as follows:

“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.” Emphasis added.

For purposes of a law suit, parties are defined in **BLACK’S LAW DICTIONARY 10TH EDITION** as follows:

“Those persons who institute actions for the recovery of their rights, or the redress of their wrongs, and those against whom the actions are instituted, are parties. The former are, in actions at common law, called plaintiffs, and the latter, defendants.”

MR. OCHARO has submitted, and rightly so, that the **KANDUYI LAND DISPUTES TRIBUNAL** had no jurisdiction to determine the dispute that was before it. Indeed if there was a proper appeal before me, I would have had no hesitation allowing it on that ground alone.

Ultimately however, **JACK NYONGESA WEKESA** who filed this appeal was not a party in the dispute before the **KANDUYI LAND DISPUTES TRIBUNAL**. He could not therefore mount any appeal to the **PROVINCIAL APPEALS COMMITTEE** or even to this Court.

In short, he is a stranger and cannot agitate any cause before this Court. This appeal is accordingly struck out with costs to the Respondent.

BOAZ N. OLAO

JUDGE

15TH NOVEMBER 2018

Judgement dated, delivered and signed in open Court this 15th day of November 2018 at Bungoma.

Ms. Wanjala for Mr. Kiarie for Respondent present

The Respondent present

Mr. Ocharo for Appellant present

BOAZ N. OLAO

JUDGE

15TH NOVEMBER 2018



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