



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Elc Case No.45 Of 2012

**IN THE MATTER OF: AN APPLICATION BY ZAMBEZI NAYAYIAI RITEI FOR JUDICIAL
REVIEW ORDERS OF CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF: THE LAND DISPUTE TRIBUNAL ACT OF 1990

AND

**IN THE MATTER OF: THE SENIOR RESIDENT MAGISTRATE'S COURT AT KAJIADO
DISPUTE TRIBUNAL CASE NUMBER 1 OF 2012**

FAITH KIPUYAN RITEY VERSU ZAMBEZI NAYAYIAI RITEI

AND

IN THE MATTER OF: LR. PARCEL NO. KAJIADO/ELANGATA – WUAS/478

ZAMBEZI NAYAYIAI RITEI APPLICANT

VERSUS

THE KAJIADO LAND DISPUTES TRIBUNAL 1ST RESPONDENT

THE SENIOR RESIDENT MAGISTRATE'S COURT AT KAJIADO 2ND RESPONDENT

THE KAJIADO CENTRAL DISTRICT LAND REGISTRAR 3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

FAITH KIPUYAN RITEY..... 5TH RESPONDENT

RULING

1. The Applicant in a Notice of Motion dated 20.3.2012 is seeking orders of Judicial Review of

Certiorari and Prohibition to quash LDT Award and prohibit implementation of the same award. The Application is based on the provisions of Order 53 Rule 1(2) Civil Procedure Rules, 2010 and all enabling provisions of the law. The Motion is based on statutory statement of fact dated 20.3.2012 and verifying affidavit sworn by Zambezi Nayayiai Ritei sworn on 20.3.2012 and a galaxy of attached annexures.

2. The same is opposed by the replying affidavit sworn by Faith Kipuyan Ritey sworn of 30.4.2012. None of the Respondents No. 1-4 filed any replying affidavit. The parties agreed to canvass the motion by way of the written submissions but only 5th Respondents filed written submissions. The Applicant's case is that she and the 5th Respondent are registered owners of Kajiado/Elangata-Wuas/478 the suit land or subject land; which is 109.3 hectares. She claim to have been allocated the same land by Elangata-Wuas Group Ranch in place of their late husband who was a member of the said Ranch.
3. On 24.5.2005 they were issued with the title deed. She claims to have had peaceful possession of the same until 2011 when the 5th Respondent claimed the same parcel of land as her sole property. She thus lodged the LDT case No.T.C.673/08/2011. Upon hearing the dispute the Tribunal ordered the suit land to be registered in the name of the 5th Respondent and her children. The Applicant claim to have a permanent house on the suit land where she resides. The Applicant thus claim that the tribunal acted beyond its mandate under Section 3 of the LDT Act by depriving her property right in the suit land.
4. The 5th Respondent opposes the Application. The 5th Respondent case is that the tribunal ordered the suit land to be registered in her names and that of her children. Further the tribunal ruled that other 3 parcels of land owned by their deceased husband Samburu/Lodokejek/34 and Samburu/Paro "A"/57 to remain in Applicant's names and her children. The 5th Respondent avers that the tribunal had jurisdiction to do what it did and cannot be faulted.
5. The court finds the following issues arising from the above contestations:
 - a. Whether the tribunal had jurisdiction in entertaining the dispute herein and making the decision impugned?
 - b. What is the order as to costs?

The facts of the claim to the LDT lodged by the 5th Respondent was for subdivision of all 3 parcels of land in Kajiado and Samburu Districts of the late Benson Ritey Ole Samperu namely:-

Kajiado/Elangata-Wuas/478

Samburu/Lodokejek/34

Samburu/Paro "A"/57

6. On the part of claim/relief sought in the form lodged, the 5th Respondent only claimed Kajiado/Elangata-Wuas/478 but non of the other 2 parcels of land. Upon hearing the parties, the tribunal distributed all the 3 parcels of land belonging to their deceased husband. It is not disputed that the tribunal not only deprived the Applicant her permanent house in Kajido/Elangata-Wuas/478 but also purported to distribute the unclaimed parcels of land.
7. The question is whether the tribunal acted within the provisions of Section 3 of LDT Act now repealed. The Act above stated stipulated that the LDT Tribunal would entertain dispute involving:
 - a. Division or determination of boundaries of land.
 - b. Claim to occupy or work land.
 - c. Trespass to land.

The tribunal claimed under the proceedings to have jurisdiction to handle the dispute over the suit land.

8. The tribunal did not divide the claimed suit land but instead deprived the applicant the same plus her development therein. The tribunal purported to order the objector to retain the balance of the other 2 portions of land which were not claimed by the 5th Respondent in the claim form. All in all the tribunal purported to distribute the estate of the deceased to the parties. This is not within the realm of the tribunal's jurisdiction under the repealed LDT Act. The same ought to have been filed in the High Court to determine how the family property should be shared taking to account all the factors and the circumstances of the parties and the properties of their late husband.
9. The court thus finds that the Tribunal acted outside the mandate donated by the repealed LDT Act Section 3 and thus its decision cannot stand. The court thus makes the following orders:-
 1. Prayers No. 1 and 2 of the Notice of Motion dated 20.3.2012 are granted as prayed.
 2. Since parties are members of the same family, parties to bear their own costs.

Dated and Delivered at Machakos this 13th day of February, 2015.

CHARLES KARIUKI

JUDGE