



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

MISC.APPLICATION NO.11 OF 2009(JR)

PHILOMENA CHEPKEMOI SERON alias

JUSTINA RONO.....APPLICANT

VERSUS

CHAIRMAN SOTIK

LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

THE PRINCIPAL MAGISTRATE SOTIK.....2ND RESPONDENT

LUCIA CHELANGAT TANGUT.....3RD RESPONDENT

JUDGMENT

The subject matter of this decision is the Motion dated 24th January 2011 taken out by **Philomena Chepkemoi Seron** alias **Justina Rono**, hereinafter referred to as the Applicant. In the aforesaid Motion the Applicant sought for the following orders:

1. **THAT** this Honourable Court may be pleased to issue an order of certiorari to remove into this Honourable Court for purposes of being quashed forthwith the decree and/or judgment of the Honourable court, the Principal Magistrate, Sotik, delivered and/or issued on 12th March, 2009 and also the verdict of Sotik Land Disputes Tribunal adopted by the Sotik Honourable Court, Land Case no.4 of 2009.
2. **THAT** the costs of this Application be provided for.

The Applicant named the Chairman, Sotik Land Disputes Tribunal, The Principal Magistrate's Court and Lucia Chelangat Tangut as the 1st, 2nd and 3rd Respondents respectively. When served, only the 3rd Respondent filed a Replying Affidavit to oppose the Motion. When the Motion came up for *inter partes* hearing, this court allowed the Applicant to proceed *ex-parte*, when the Respondents and their advocates failed to appear in court despite having been served with a hearing notice.

I have considered the grounds set out on the face of the statutory statement of facts and the facts deponed in the verifying affidavit of the Applicant. I have further taken into account the facts deponed in the replying affidavit of the 3rd Respondent. The brief history behind this dispute is short and straightforward. The 3rd Respondent herein filed a complaint before the Sotik Land Disputes Tribunal claiming beneficial interest of the parcel of land known as **L.R.no.Kericho/Chemagel/1057**. The Land Disputes Tribunal in the end awarded the 3rd Respondent a portion measuring one (1) acre to be excised from L.R.no.Kericho/Chemagel/1057. The award was adopted as the Judgment of the Sotik Principal

Magistrate's Court on 16th February 2009 vide Sotik, Land Dispute no.4 of 2008. Being aggrieved, the applicant was prompted to take out those proceedings to impugn the decision.

The main ground relied upon and argued by the Applicant is that the Sotik Land Disputes Tribunal heard and determined a dispute it had no jurisdiction hence acting ultravires the **Land Disputes Tribunals Act no.18 of 1990**. The 3rd Respondent in her replying affidavit averred that she was entitled to inherit from the estate of Arap Tangut, deceased, in her capacity as the 4th Widow. She alleged that the Applicant fraudulently registered herself as the owner of L.R.no.Kericho/Chemagel/1057 by transmission having succeeded their late husband, Arap Tangut. It is clear she did not address her mind to the question as to whether or not the Sotik disputes tribunal had jurisdiction to entertain her complaint in the first place. It is apparent from the pleadings and the averments stated in rival the affidavits that the parcel of land in dispute i.e Kericho/Chemagel/1057 was transferred from Arap Tangut and registered in the name of the Applicant by transmission despite the Applicant's assertion that the same was transferred to her intervivos. It is also clear from the material placed before this court that the Sotik Land Disputes Tribunal made an award as though it was the succession court. It purported to distribute the estate of the late Arap Tangut. By the time the Land Disputes Tribunal handled the dispute, the land in question had already been transferred and registered in the Applicant's name. In short, the Land Disputes Tribunal had no jurisdiction to hear and determine the dispute under **Section 3** of the **Land Disputes Tribunals Act no.18 of 1990 (now repealed)**. I find the Motion dated 24th January 2011 to be well founded. I allow the same as prayed. Save that since the Applicant and the 3rd Respondent are members of the same family, I direct each one of them to meet her own costs. If well advised, not all is lost for the 3rd Respondent if she can take out the relevant action to further pursue her rights in the right forum.

Dated, Signed and delivered in open court this 30th day of May 2014.

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J.K.SERGON

JUDGE

In the presence of:

N/A Mr. Koskei for Applicant

N/A Mr. Chirchir for 1st Respondent

N/A Mr. Chirchir for 2nd Respondent

N/A Mr. Chirchir for 3rd Respondent