

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

MISCELLANEOUS CIVIL NO: 1 OF 2007

ANZELLIMO IMBIAKHA SHISEKANA.....APPLICANT

AND

EVERLYNE MMBONE.....INTERESTED PARTY

VERSUS

THE HON. ATTORNEY GENERAL & ON

BEHALF OF LURAMBI LDT.....RESPONDENTS

RULING

The amended Notice of Motion dated 26/3/2012 seeks an order of certiorari to quash the decision of the Lurambi Land Disputes Tribunal in relation to plot number **BUTSOTSO/SHIKOTI/2201**. Counsel for both parties agreed to determine the application by way of written submissions.

Mr. Mukavale, Counsel for the ex-parte applicant contends that the dispute before the Tribunal involved ownership of land. The claim was based on contract and therefore the Tribunal lacked jurisdiction to entertain the claim.

On his part, Mr. Samba Counsel for the interested party maintains that the application is totally defective. There was no statement of facts when leave was granted. There is also filed an amended supporting affidavit yet there is no rule allowing amendment of affidavits since affidavits contain evidence.

The dispute herein involves sale of a portion of plot number **BUTSOTSO/SHIKOTI/2201**. The interested party bought ½ acre from the applicant's father. He later bought ¼ acre from the applicant. He fully paid purchase price. The applicant admits those facts but contends that he wanted refund the purchase price and indeed paid part of it but this is denied by the interested party.

The interested party filed her claim before the Lurambi Land Disputes Tribunal. The decision of the tribunal is to the effect that the applicant should honour the sale agreement. This is the decision the applicant seeks to quash.

From the pleadings herein it is not in dispute that parties entered into a land sale transaction. It is also admitted that the entire purchase price was paid. Although I do agree with the technical submissions by counsel for the interested party that the rules do not provide for supporting affidavits. However, the intention is to have an affidavit verifying the statement of facts and the pleadings. I do find that dismissing the notice of motion on the basis would be tantamount to basing the decision on technicalities. Article 159 of the Constitution encourages courts to determine disputes on merit.

The main issue is whether the decision of the Lurambi Land Disputes Tribunal altered the title of the suit land it is clear from the land was registered in the names of the applicant's father **ANZELLIMO IMBIAKHA** who is now deceased. According to the interested party, the applicant asked for money to file a succession cause which she did. The decision of the Tribunal is that the applicant should honour the Sale Agreement. It did not order cancellation of the title deed or sub-division of the land. The Tribunal further directed that the cane contract with Mumias Sugar Company for the portions of land bought by the interested party should be changed into the names of the interested party.

Given the pleadings herein, I do find that the Tribunal did not resolve the dispute between the parties. The interested party's claim before the Tribunal can be treated as a claim to occupy or work on the $\frac{3}{4}$ acre of the land she purchased. I do find that there is nothing to quash. The Tribunal did recognize the interested party's right on the land and did not cancel the title deed. I do agree with the findings of the Tribunal that the interested party should continue occupying the $\frac{3}{4}$ acre portion of the land until the disputes herein is determined by a court of competent jurisdiction. Quashing the decision of the Tribunal will not assist any of the parties as the applicant would still need to lawfully rescind the Sale Agreement if indeed he does not wish to proceed with the transaction. It is clear that part of the purchase price as paid to the applicant's father and the interested party can pursue her claim as a liability to the estate of the applicant's father. As of now, this ruling does also not solve the dispute between the parties. Parties are advised to either file a separate suit seeking specific performance or rescission of the Sale Agreement or pursue Succession proceedings. There is no need to quash the decision of the Tribunal as it did not confer any title to the interested party.

In the end, I do find that the Notice of Motion dated 26/3/2012 lacks merit and the same is hereby dismissed with no orders as to costs.

Dated, delivered and signed at Kakamega this 16th day of September 2014.

SAID J. CHITEMBWE

JUDGE