



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL APPEAL NO. 145 OF 2003**

**WEKESA SININO ..... APPELLANT**

**VERSUS**

**MARKO KUSIENYA SIMINO ..... RESPONDENT**

***(Being an appeal from the decision of Hon. K. Mugambi Senior Resident Magistrate in Kakamega Chief Magistrate Misc. Application Case No. 106 of 2000 dated 15<sup>th</sup> October 2003)***

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***(Before B. Thurania Jaden J)***

**J U D G M E N T**

The Appellant, **Wekesa Sinino** (later substituted by **Belinda Waliambila Wekesa**) was the claimant in **Lugari** Land Disputes Tribunal No. 9 of 2000. The Respondent, **Marko Kusienya Sinino** was also substituted by **Thomas Muturo Kusienya**.

The dispute between the parties was in respect of land parcel No. **Kakamega/Lugari/101** which is approximately 80 acres in size. The decision of the Land Dispute Tribunal was that seven (7) acres of the suit land was to go to the Respondent while the rest of the land was to go to the appellant.

The appellant moved the lower court vide application dated 26/5/2000 to have the award of the Land Disputes Tribunal adopted by the court in **CMC Kakamega Misc. Award No. 106 of 2000**. The award was adopted on 19/9/2000 and orders issued for the Executive Officer of the court to execute all the documents required to facilitate the survey and registration of the suit land.

The Respondent thereafter filed the application dated 23/4/01 seeking *inter alia* the setting aside of the orders dated 19/9/00. The application dated 23/4/01 was allowed on 6/11/01 and the adoption orders set aside. Consequently, the award of the Land Disputes Tribunal remained pending adoption by the court. The hearing of the application for the adoption of the award dated 26/5/2000 was adjourned severally and dismissed on 18/12/2002 for want of prosecution.

That is what triggered the filing of the application dated 21/3/03 seeking the reinstatement of the application for adoption dated 26/5/2000.

On 15/10/2003, the application for reinstatement dated 21/3/03 was dismissed with costs. The lower court observed as follows:-

**“... The matter had been finalized. The elders’ award was adopted. The executive was**

**given powers to sign transfer documents. This was now a matter for appeal purposes in the High Court.”**

This is the ruling that has triggered this appeal. The appeal is premised on the following grounds:-

1. **THAT the learned trial magistrate failed completely to address himself to the application dated 21/3/2003 and arguments made in support thereof.**
2. **THAT the learned trial magistrate grossly erred by failing to hold that in any event an application for adoption under the Land Disputes Tribunal Act No. 18/1990 cannot be dismissed for want of prosecution.**
3. **THAT the learned trial magistrates decision smacks of bias as he had in the same proceedings allowed a similar application made on behalf of the respondent.**
4. **THAT the learned trial magistrate failed to consider and appreciate the obvious ramifications of his un-sound decision.**
5. **THAT learned trial magistrate’s decision and reasons advanced in support thereof do not make sense and contradict the court record.**
6. **The learned trial magistrate did not exercise his discretion judicially.**
7. **The learned trial magistrate sketchy ruling was un-just.**

The appellant was represented by **Kiveu Advocate** while the Respondent was represented by **Akwala Advocate**. During the hearing of the appeal, the parties relied on written submissions which I have duly considered.

The ruling was however delivered on 15/10/2003 and not on 22/10/03 as stated in the memorandum of appeal. This must be a typographical error. Be as it may, the ruling dated 15/10/2003 shows that the magistrate failed to take into account that the adoption order had been set aside. There was no adoption order on the record, hence the application dated 26/5/2000 for reinstatement of the application for adoption.

I would agree with the appellant’s counsel that the magistrate veered off the track and did not address his mind on issues that were before him. Sadly, the ramification of the decision complained about is that the award of the tribunal has not yet been adopted about twelve (12) years after the Land Disputes Tribunal made its decision. This has stood in the way of further court processes that could have followed the order of adoption.

The appellants prayer is that the decision (dated 5/10/2003) be quashed and an order made for the hearing of the application dated 26/5/2000 *inter partes*. I allow the appeal. Each party to bear own costs.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Kakamega this 18<sup>th</sup> day of April 2013.

**SAID J. CHITEMBWE**

**JUDGE**