



REPUBLIC OF KENYA

High Court at Eldoret

Miscellaneous Civil Application 300 of 2002

REPUBLIC.....APPLICANT

VERSUS

KILIBWANI DIVISIONAL LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

MR. F MABELE, KAPSABET PRINCIPAL MAGISTRATE.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

AND

THOMAS NG'ETICH.....INTERESTED PARTY

AND

EX PARTE

CHRISTINE CHEPKETER SANG'

JUDGMENT

Pursuant to leave of court granted on 7th October 2002 the ex parte applicant filed a Notice of Motion seeking the following reliefs:

- 1. An Order of Certiorari removing into this Honorable court for the purposes of quashing forthwith the proceedings and the decision of the KILIBWONI DIVISION LAND DISPUTES TRIBUNAL case made on 9th July 2002 and signed on 26th August 2002 over parcel of land No. NANDI/KOILLOT/227 between THOMAS NGETICH and CHRISTINE CHEPKETER SANG and filed in the Kapsabet Principal Magistrates Court as Land Disputes Tribunal Case no. 42 of 2002**

between THOMAS NGETICH and CHRISTINE CHEPKETER SANG.

2. **An Order of Mandamus to compel and direct the Nandi District Land registrar to cancel any entries made in respect of all that parcel of land known as Nandi/Koilot/227 in respect of any survey, sub-division, fencing off, transfer, alienation or any other dealings done and to remove any beacons or boundary marks on the said parcel of land which may have been entered and or placed consequent to the decision of KILIBWONI DIVISION LAND DISPUTES TRIBUNAL Award made on the 9th July 2002 and signed on 26th August 2002.**
3. **An Order of prohibition to prohibit the Nandi District Land Registrar from making any entries in the register pursuant to the decision of the KILIBWONI DIVISION LAND DISPUTES TRIBUNAL made on the 9th July 2002 and signed on 26th August 2002. over parcel number NANDI/KOILLOT/227 between THOMAS NGETICH and CHRISTINE CHEPKETER SANG.**
4. **An order of prohibition to prohibit the Kapsabet Principal Magistrate or any other magistrate from reading adopting or entering judgment for the Interested Party herein pursuant to the proceedings and the decision of the KILIBWONI DIVISION LAND DISPUTES TRIBUNAL made on the 9th July 2002 and signed on 26th August 2002. over parcel number NANDI/KOLOLOT/227 between THOMAS NGETICH and CHRISTINE CHEPKETER SANG and filed in the Kapsabet Principal Magistrates Court as Land Disputes Tribunal Case no. 42 of 2002 between THOMAS NGETICH and CHRISTINE CHEPKETER SANG.**
5. **That costs be provided for.**

The Motion was founded on the following grounds as apparent from the Statement.

1. **That the ex parte applicant is not the registered owner of all that parcel of land known as Nandi./Koilot/227.**
2. **That the said land was allocated to Stephen Sang who was servicing the loan and upon his demise the interest is now subject to Succession proceedings.**
3. **That the tribunal has no jurisdiction to deal with title to land registered under the Registered Land Act.**
4. **That ex parte applicant was not given fair hearing by the tribunal.**
5. **That the tribunal proceeded in breach of natural justice as regards the registered owner.**

The Motion was supported by the facts in verifying affidavit and a further affidavit sworn by the ex parte applicant.

The Interested Party was allocated ten acres of land from Nandi/Koilot/227 without consent of the *ex parte* applicant and her sons. The elders made the decision. She did not agree with the decision. The Interested Party lodged a complaint with the Kilibwoni Division Land Disputes Tribunal hereinafter the "Tribunal." That she appeared before the tribunal and sought more time to get her witnesses. That she was denied time and the tribunal made its award on 9th July 2002 awarding the Interested Party ten acres out of Nandi/Koilot./227. She exhibited a copy of certificate of title and sercah showing that the land was in the name of Settlement Fund Trustees. She also annexed death certificate of her husband Stephen Sang' who had been allocated land by the Settlement Fund Trustees. The proceedings before the Tribunal and the award were annexed.

The Attorney General was served on behalf of the Respondents and filed grounds of opposition dated 2nd June 2005 contending that the application was incurably defective; that it was misconceived incompetent and bad in law and that the application lacks merit. The motion was canvassed orally on 26th

May 2009. The Attorney General and the Interested Party though served did not attend. Counsel for the *ex parte* applicant submitted that the tribunal did not accord the *ex parte* applicant a fair opportunity to present her case. That ten acres was awarded to Interested Party while property was registered in the name of Settlement Fund Trustees. That the Settlement Fund trustee has title registered under the Registered Land Act. The allottee of the land was Stephen Sang' deceased. The suit land was subject of Succession Cause No. 135 of 1999 in respect of the estate of Stephen Sang'. That the Interested Party was an Objector in the Succession Case. That the succession cause was the right forum.

have considered the submissions of counsel and also the pleadings on record. It is clear that the tribunal exceeded its power under section 3(1) of the Land dispute Act. It has been stated time and again that the tribunal has no jurisdiction to determine questions of ownership over registered land. If it purports to do so it moves without jurisdiction and its decision is subject to the judicial review powers of certiorari. The land in issue was registered in the name of Settlement Fund Trustees. They were not parties to the proceedings before the tribunal. No decision could be made touching their land without them being heard. The tribunal was guilty of breach of the rules of natural justice. An order of certiorari will issue to quash a decision that has been without or in excess of jurisdiction; or a decision arrived at in breach of the rules of natural justice. The *ex parte* applicant has demonstrated that the decision of the 1st respondent was made without jurisdiction and secondly that there was breach of the rules of natural justice.

The notice of Motion seeks several reliefs. Prayer 3(b) is not merited because it is a Statutory duty of Magistrate's court to read and adopt award of land dispute tribunal. In so doing they proceed within jurisdiction and a prohibition will not issue. It only issues where an inferior tribunal is proposing to proceed in excess of jurisdiction. For these reasons I find that the Notice of Motion dated 25th October 2005 is merited and I allow it in terms of prayers 1,2 and 3(a) only. With costs as against the Interested Party. It is so ordered.

Dated and SIGNED at Nairobi on this 22nd day of august 2012.

M. K. Ibrahim
Judge

DATED AND Delivered at Eldoret on this 27th day of September 2012

Abigail Mshila
Judge

In the presence of: Ngumbi for 1st, 2nd and 3rd Respondents

N/A for Ex parte applicant

N/A for Interested party