



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISCELLANEOUS CIVIL APPLICATION 722 OF 2008

ANDREN NYAMBURA NJIKA:::APPLICANT
VERSUS
THE CHAIRMAN - NORTH NANDI LAND
DISPUTES TRIBUNAL - KAPSABET DIVISION:::::::::::::::::::::RESPONDENT

RULING

I. Background.

1. Exparte applicant Andren Nyambura Njika a female adult and widow to the Late Josiah Njika Njoroge (the Registered proprietor of Land LR. Nandi Kamobo 1083) appeared before the Land Disputes Tribunal at North Nandi in the Kapsabet Division. A claim was brought against her late Husband that the title he held encroached into the claimants land. The claimant Rev. Justine A. Ansoyeye on behalf of the Pentecostal Assembly of God (PAG) Church informed the Tribunal that the churches parcel of land adjacent to that of the Late Josiah Njika being LR Nandi Kamobo 1084 was only 0.06Ha. instead of 0.2Ha. all he wants is for the parcel of land for the Church to be 0.2Ha.
2. The Tribunal on hearing both parties gave an award that the churches plot was smaller on the ground than in the Title Deed. They made award that a district surveyor sub-divide the two parcel of land to 0.2 Ha to the claimant and 0.5Ha to the Respondent. These orders were given on dates not clearly shown on the award.
3. Being dissatisfied with the findings that were later adopted as orders of the Court on the 2nd September, 2008 by the Principal Magistrate's Court Case Land Case 67/05, the applicant applied for Judicial Review Proceedings. This was granted on the 3/12/08 (Ibrahim J.) a notice of motion was filed on 8/12/08 that came for hearing before this court on the 18th May 2010.

II. Notice of Motion 8/12/2008

4. The exparte applicant informed the Court that her late husband passed away on the 7th July, 2005 at the time the proceedings of the Tribunal was being conducted no grant of letter of administration had been taken out by his estate. It was noted on 3rd November 2006. Letters of advocate ad Colligenda Bona were issued by Rawal J. at Nairobi to the exparte applicant.
5. Secondly, there was no jurisdiction by the Tribunal to make determination on the question of the Registered Lands Act Titles.

III. In Reply:

6. The advocate for the state informed the court that the Judicial Review application was time barred having been brought outside the six months period allowed by law. The state nonetheless conceded that the tribunal had a matter where the owner of the land had died. No grant of letters of Probate or administration had been taken out therefore the proceedings were an illegality.
7. I wish to mention on the issue of the six months period to bring a claim of certiorari to this court has in the past ruled and reaffirmed that time begins to run at the stage where the award and application to adopt the award as the judgment of the court. This is at the Magistrates Court which is a matter of course. It therefore meant in this case that the award was made and adopted on the 2nd September 2008. The six months expired on 1st March 2009 the Judicial Review Proceedings were filed to

this court on 2nd June 2008.

8. The six months period had therefore not expired. The decision by this court of:

James Chumo Versus Chairman Sigowet Land Dispute Tribunal & Two Others

Ruling No. 1 of 8/12/08 at Kericho. **Miscellaneous Application 78/08** gives details and arguments on this point that included the decision of **Republic Versus Land Disputes Tribunal Kirinyaga District & Others Miscellaneous Application 124/04** (Bauni J. at Nyeri)

9. The Second issue is that of locus of the exparte applicant to appear to the Tribunal. Her late husband passed away on 7th July 2005. The Tribunal case was finalized before she was issued with temporary letters of grant ad colligenda Bona on 3/11/06 by Rawal J.

10. The dates of the actual finalization of the Tribunal Case is not clear but may be some time in the year 2005.

11. The state concedes that there was no locus by the exparte applicant to be heard.

12. According to the Touristic Case Versus Jane Mbiyu, Mombasa, the Court held that grant of letters intestate on letters of Probate must first be obtained by a legal representative before filing suit. There was none at the time. The proceedings had been concluded. This goes to the jurisdiction of the said tribunal. They therefore had no locus to hear the said tribunal matter.

13. I accordingly allow the application for certiorari the judgment of the magistrates court is brought to this High Court and quashed.

14. As the advocate is on strike and failed to attend court there will be no costs issued to the plaintiff.

Dated this 26th day of May of year 2010 at Eldoret.

M. ANG'AWA

JUDGE

Advocate: -

D. Omwenga Advocated instructed by the Firm of M/s Omwenga & Company Advocate for the Exparte/Applicant

M/s Terer Advocate instructed by the Firm of M/s Terer & Company Advocate for the interested party