



1. Land Law
2. Civil Practice and procedure
3. Subject of the main suit.
 - (i) **Declaratory**
 - (ii) **That the lands disputes tribunal verdict be declared null and void.**
4. Application in High Court – Stay of execution Kapsabet PM LDT 23/2008 Decree Illegal
 - (a) **LR. Nandi/Kap Kangani/1896 land.**
 - (b) **Sale agreement.**
 - (c) **3rd party/defendant files case at the Lands Disputes Tribunal Kapsabet claiming to be a buyer.**
 - (d) **Award given by Lands Disputes Tribunal transferring land to 3rd party.**
 - (e) **No proceedings provided – unable to appeal to provide lands dispute tribunal**
 - (f) **Unable to file gradual renew proceedings as six months expect order of certiorari.**
 - (g) **Stay of execution**
5. Held.
 - (i) **Issue between is one of contract.**
 - (ii) **Sale of land.**
 - (iii) **Issue not of boundary dispute, customary law trespass,**
 - (iv) **Application for injunction granted till determination of the main suit.**
6. **Case Law.**
 - a) *Joseph Njoroge Khan & 7 others -vrs-Stephen Kiongo Khan & another Nai. MISC.Application 403/05 Waweru J.*
 - b) *Duncan Muchina Gachuri & 3 others -vrs-Dadson Macharia Gachuri(Sergon J.) Misc. 260/2009*
7. Advocate
 - Defendant – In person
 - Plaintiffs - In person

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 121 OF 2010

FRANCIS KISAGA SHIROLLIKOR.....PLAINTIFF

VERSUS

GRACE MIDECHA MUGALLA.....1ST DEFENDANT

THE CHAIRMAN KAPSABET LAND DISPUTE TRIBUNAL.....2ND DEFENDANT

THE CHAIRMAN KAPSABET DIVISION LAND CONTROL BOARD.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

I. Introduction

1. According to the Lands Disputes Tribunal Act, once a case before the tribunal has been heard and determined, an appeal would be to the Provincial Lands Disputes (Section 8) Tribunal. Thereafter the appeal would be that the High Court (which appeal) must be filed within sixty (60) days from the date of the decision complained of. Such appeal would be on points of law (other than customary law).
2. If the proceedings is a nullity, then the aggrieved party would file Judicial Review Proceedings in which the order of the tribunal would be sought to be brought to the High Court and quashed by way of Certiorari under Order LIII r 3 of the CPR. An application under this order must be made within a period of six months.
3. The period of appeal of applying for Judicial Review is set by statute.
4. Under the Lands Disputes Tribunal the period is also set by statute. I am persuaded by the decision of:-

JOSEPH NJOROGE KHAN & 7 OTHERS

-VERSUS-

STEPHEN KIONGO KHAN & ANOTHER.

Nai.Misc.Appli.403/2005 (Waweru J.)

An application by that court was declined, for leave to file an appeal out of time against the decision of the Provincial Appeals Committee. The application had been brought under order 49 r 5 Civil Procedure Rules and section 3A and 79 of CPA. Under the lands disputes tribunal Act, no court has powers to extend the committee by section 8(9) of that Act a statute.

5. In the same manner, under the Limitation of Actions Act, Cap 22. There is no provisions to extend time to apply for leave to appeal out of time.
6. Dealing with the Judicial Review Proceedings under order LIII CPR, there is no provision to extend time for such proceedings as the rules derived from the Law Reform Act cannot be extended being so limited by the statute.
7. I am persuaded again by the case law of :-

DUNCAN MUCHINA GACHURI & 3 OTHERS

-VERSUS-

DADSON MACHARIA GACHURI

Nyeri Misc. Applic. HCCC.260/2009

Sergon J. ruling on the decision of WILSON OSOLO

-VERSUS-

JOHN OJIAMBO OCHOLA & ANOTHER.

C.A. 6/1995.

“The court has no jurisdiction to extend time fixed by statute and where the legislation did not donate the discretion to the court to do so”

8. In this current case before me, the applicant plaintiff appears in person. He has filed before this High Court a declaratory suit seeking orders to declare the decision of the Lands Disputes Tribunal a nullity. He also seeks orders of Stay of Execution of the Principal Magistrate Court at Kapsabet.
9. In brief, the applicant is alleged to have entered a sale agreement with another party. That person is alleged to have sold land to the Respondent. No priority of contract laid between the plaintiffs – vrs- Defendant. It is unclear whether the first sale agreement was completed. In all aspects the defendant third party in the alleged sale transaction filed a dispute with the Lands Disputes Tribunal. The Tribunal heard the dispute and gave award to the third party/defendant/respondent. It is trite law that the tribunal mandate under the Act is specific namely:-

- (a) ***“The division of or the determination of boundaries to land including held in common***
- (b) ***A claim to occupy or work land or***
- (c) ***Trespass to land”***

10. The applicant attempted to appeal to the Provincial Lands Tribunal, he was not availed the proceedings at all, or in time. The time to appeal lapsed, the time also to file Judicial Review Proceedings for Certiorari being six months lapsed. He comes to court by way of a declaratory suit and seeks order of stay of execution of the Magistrate Court Case23/2008 at Kapsabet filed in 2008 from a decision made in 2003.

II OPINION

11. It is without a doubt that under the Lands Disputes Tribunal that all the avenues were closed to the applicant to seek further redress on appeal on under Judicial Review. It is also very clear that the mandate by the Lands tribunal did not give it powers to decide on the ownership of the land.
12. In this case the main subject is that of a sale agreement, and the sale of land. The plaintiffs entered into a sale agreement with another and not the Defendant/Respondent. This indeed is a case which falls under the Civil Procedure Act and not the Lands Disputes Tribunal. The applicant may require to amend his pleadings to agitate the aspect of limitation of action contract act Subject to Cap 22.
13. The justice of the law demands that the applicant be heard. To this end I would grant orders of Stay of Execution of the decree at Kapsabet PM LDT. CASE NO. 23 OF 2008 till the determination of the suit before this High Court.
14. That the parties are appearing in person, no orders of costs be made.

Dated this 30th day of September, 2010 at Eldoret.

**M.A. ANG’AWA.
JUDGE.**

Advocate
- Defendant – In person
- Plaintiffs - In person