



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Misc Civil Appli 25 of 2002

REPUBLIC APPLICANT

VERSUS

KAPSABET LAND DISPUTES TRIBUNAL RESPONDENT

AND

KETER KIPCHOGE MISOI INTERESTED PARTY

EX-PARTE: CHRISTINE JEPKOSGEI NGETICH

JUDGEMENT

The Applicant lodged this application for judicial Review orders in the following terms:-

1. That the Applicant be granted the ORDER OF CERTIORARI to issue to remove into the High Court and quash forthwith:-

(a) The PROCEEDINGS of the Respondent held on the 16th day of October, 2001 and filed on the 15th day of November, 2001 in the Kapsabet P.M.C. Land Disputes Tribunals Case No. 76 of 2001 (Peter Kipchoge Misoi –Vs- Christine Jepkosgei Ngetich) awarding the whole of all that piece of land known as Nandi/Kiminda/635 to the Interested Party.

(b) The JUDGEMENT of the Kapsabet Principal Magistrate entered on the 4th day of December, 2001 (Peter Kipchoge Misoi –Vs- Christine Jepkosgei Ngetich) awarding the whole of all that piece of land to the Interested party.

(c) THAT the Applicant be granted an Order of Prohibition to prohibit the Kapsabet Principal Magistrate or any other Magistrate from executing the Judgement entered on the 4th day of December, 2001 or the resultant Decree thereof.

The grounds raised in the applications are that:

1. The Respondent did not have the Jurisdiction to entertain the Interested Party's claim.

2. The Interested Party did not serve a Statement of claim upon the Applicant in order to enable the latter file an answer thereof.
3. The Interested Party did not have a lawful cause of action.
4. That the Respondent acted ultra vires the provisions of the Land Disputes Tribunal Act.

The Application was opposed by the Interested Party in an affidavit sworn on 27th June, 2002. He stated, inter alia, that:-

- The decision of the Board was proper and just.
- The Applicant was fully represented and she cannot claim that she did not receive adequate hearing.
- That Land Parcel No. Nandi/Kiminde/634 is my land, a fact which the Applicant is fully aware and that we have been staying there for many years.
- That the Applicant registered herself as owner of the land fraudulently.
- That we have stayed in the land for over 30 years giving credence to the fact that although the Applicant has title, we have throughout owned the land by way of prescription and/or adverse possession.

I have considered the Application, the Verifying Affidavit,

Statement and the Replying Affidavit.

I have also carefully read the proceedings and Award of Kapsabet Land Disputes Tribunal delivered on 30/10/01.

The land in question is registered in the name of the Applicant. This is not a disputed fact. The Award confirms this. The Applicant became registered as the proprietor of the land on 7.11.89 and the title deed was issued on 16.11.89. The land is registered under the Registration of Lands Act, Cap. 300.

It is Interested Party's case that he acquired the said land by prescription and/or adverse possession having stayed on the land for over 30 years. The Tribunal on its part found that the Interested Party was entitled to the land since it was given to his mother by his grandmother. His grandmother and mother are not parties to the suit. They have never been registered as proprietors of the land.

The Tribunal's award is scanty and does not show the thought process of the panel and their reasoning. It is a poor piece of work.

In any case, the Land Disputes Tribunal under the Act clearly has no jurisdiction to determine claims of prescription or adverse possession. Such cause of action can only be heard and determined by the High Court. On this ground the Tribunal did not have jurisdiction to deal with the dispute.

If the cause of action is based on inheritance or succession then equally the Tribunal had no jurisdiction either.

With a lot of disappointment and sadness, this is yet another case where the Tribunals have misled innocent Kenyans and assumed jurisdiction that they did not have. Parties have lost time and money yet no progress has been made. They are back to square one. It is high time that the Land Disputes Tribunal Act is repealed and done away with as it is an instrument of the oppression of Kenyans and has only led to an increase of unnecessary litigation and the clogging of the Court system in Kenya leading to delays in the expeditious disposal of cases.

It is also time that Counsels/Advocates are firm and bold to advise their clients appropriately as the law on the limits of jurisdiction of the Tribunals is well established and of great notoriety that I have no doubt that each and every Counsel knows the law on this point.

In the premises, I do hereby grant prayers 1 (a), (b) and (c) of the Notice of Motion dated 31st January, 2002 with costs to the Applicant as against the Respondent and the Interested Party.

DATED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF JANUARY, 2009.

M. K. IBRAHIM

JUDGE

In the presence of:

No appearance for the parties

Applicant

Interested Party