



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Miscellaneous Civil Application 125 of 2008

1. Land Law
2. Judicial review Application
 - a. Land disputes tribunal – Belgut (18.2.08)
 - b. LR Kericho/Kapsuser/252., 4.2 Ha
 - c. Decision of tribunal
 - i. Son to applicant Grace Cheptorus suffered from Epilepsy.
 - ii. wife found for son being Lily Koskei
 - iii. Son dies
 - iv. Lily Koskei and mother in law Grace Cheptorus do not get along
 - v. matters refereed to tribunal
 - vi. Tribunal held that land be divided into four portion i.e. to Grace, and three sons as Lily Koskei husband as dead she would get his portion.
 - vii. The decision made orders of court by magistrate Misc. application 20/08
 - viii. The respondent Lily transfers land to her name.
 - ix. Advocate files HCCC. 3/09 seeking orders of injunction which orders is granted 23.3.09 Ang’awa J.
 - x. Chair of tribunal seeks to and does adjourn case to get the attorney general to represent him.
 - xi. Attorney General fails to attend court.
3. **Application Notice of motion 10th December, 2008**
 - a). The tribunal has no powers to deal with land title.
 - b). Powers concerns customary law only

In reply

- i) Chair land disputes tribunal
Respondent No. 3 is a married woman and entailed to a share of land.
- ii) Advocate respondent NO. 3 The land disputes tribunal is a court.
The tribunal is empowered to hear dispute of issue of law.
The 3rd respondent is one who is entitled to be legally recognized under customary law.
- iii) Respondent NO. 2- Magistrate Kericho Law courts absent.

4. Held

- a) The Land disputes tribunal exceeded their mandate
- b) Application granted. Orders writ of certiorari issued to bring to this court and accordingly quashed.

5. Case Law

a) R V Chairman Land disputes Tribunal

Kirinyanga District and Another exparte Kariuki

b) Wamwea v Catholic Diocese of

Muranga Registered Trustees.

6. Advocates

E.M. Orina advocate instructed by the firm of M/S E.M. Orina & Co. advocates for the applicant – present

No appearance for the Attorney General

GRACE CHEPTORUS APPLICANT
VERSUS

CHAIRMAN BELGUT LAND DISPUTE TRIBUNAL..... 1ST RESPONDENT
THE PRINCIPAL MAGISTRATE COURT, KERICHO ...1ST RESPONDENT
LILY KOSKEI 3RD RESPONDENT

RULING

I: Background

1. It is alleged that Grace Cheptorus is the registered proprietor of LR. NO. Kericho/Kapsuser/252 comprising of 4.2. Hectares (1970).
2. She had a son called William Kitur who had been suffering from Epilepsy for a long time. The family agreed that they find him a wife who would nurse him. They chose Lily Koskei the 3rd respondent herein after one year the relationship between her and Lily broke down. She withdrew assistance from her including allowing her to pluck the tea bushes. Her wish was to have Lily leave the home as she was disobedient to her.
3. Lily Koskei took her complaint to the tribunal. There both of them were heard before the elders.
4. The Land dispute tribunal instead of dealing with the customary issue for example whether the respondent No. 3 was a lawful wife or not? They concluded in their decision that the land parcel so registered in the name of the applicant be divided into four equal portion
 - a) **Grace Cheptorus (owner)**
 - b) **Joseph Kitur (son)**
 - c) **Lily Koskei w/o late William Kitur (Complainant)**
 - d) **Samuel Kitur (son).**
5. This award was filed at the magistrate's court at Kericho Miscellaneous Case No. 20/08.
6. Being dissatisfied with the decision of the tribunal the applicant filed this Judicial Review proceedings and sought leave. Leave was duly granted by this court (*Ang'awa J* 8th December, 2008) to bring Judicial Review Proceedings of a writ of certiorari. A Notice of motion dated 10th December, 2008 was filed and served upon the respondents.
7. The chair of the tribunal respondent No. 1 appeared in person and sought time to have the Attorney General instructed to represent him. The respondent No. 2, the magistrate court at Kericho did not appear. The third respondent appeared through an advocate.
8. Dispute awaiting the Attorney General to attend court on several occasions this matter was set down for hearing.
9. I would like to just mention here that during the pendency of this case the 3rd respondent Lily Koske working together with an Executive Officer of this Court whose name is not disclosed in the land documents transferred the said property to her name. The applicant filed a case HCCC. 3/2009 on 28th January, 2009 seeking the courts order to declare the sub-division of the original title was illegal, irregular and unprocedural null and void. She further sought for orders that LR No. Kericho/Kapsuser/4945 new title be cancelled.
10. This court granted the injunction. Thus most certainly a function known as *Les pendents*, namely dealing with land when a court case is pending. The case is pending awaiting the outcome of this case.

II: Notice of motion 10th December, 2008

11. The applicant relied on the case law of
Republic v Chairman Land Disputes
Tribunal, Kiranyaga District and another
exparte Kariuki (*Khamoni J*)
and the case of
Wamwea V Catholic Diocese of
Muranga Registered Trustees.
12. In brief, the tribunal had no jurisdiction to entertain and deal on matters concerning **land** touching on ownership. The tribunal is mandated to apply customary law in determining land disputes even when the land is registered under the **Registered Lands Act**.
13. The dealing by the tribunal of the registered title was irregular and its decision to divide the suit premises was null and void.

III: In reply

14. The chair of the tribunal argued that the 3rd respondent was a married woman and had a right to be on the suit property. That thereafter she is so entitled to the land.
15. The advocate for respondent No. 3 emphasized **Section 159** of the **Registered Lands Act** that gives the tribunal the powers to deliberate on the matter.

IV: Opinion

16. The applicant is a registered proprietor. This fact is not questioned by the parties. The issue is whether the tribunal had a right to sub- divide the said land that touched on the ownership. From the **Lands Disputes Tribunal Act** it is clear that their mandate is limited to only Customary Law.
17. I accordingly hold that the award orders of the tribunal was irregular obtained. I allow this application and issue a writ of certiorari to bring

the award orders of the tribunal to this court. It is accordingly quashed and set aside.
18. I award costs of this application to the applicant.

DATED this 14th day of May, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

E.M. Orina advocate instructed by the firm of M/S E.M. Orina & Co. advocates for the applicant – present
No appearance for the Attorney General

