



1. Land Law

2. Originating summons

- a. Adverse possession
- b. Applicant claims

Land parcel Kericho/Kimulot/514 was registered in the name of Sarah Chesiele Barta as trustee for him.

- c. Land 10.8 Hectres but he claims two acres.
- d. Wishes to be declared registered proprietor

3. 1st respondent appears in person

- i) Argument that the whole parcel of land was never family land but belonged to the late husband.
- ii) Entitled to land through succession.

4. 2nd Respondent

- i) Suit was determined in case 32/96.
- ii) Matters referred to arbitration to District officer – Held land belonged to 1st respondent.
- iii) Award set aside.
- iv) 2nd award referred to arbitration and issued by A.C. Bett an advocate of High Court

who held land family land and held in trust of 2nd respondent

5. Advocate J.M. Motanya changes advocate incase 32/96 and respondent Sarah Chesiele Barta

- ii) Applies to review the award by A.C. Bett advocates
- iii) Review is dismissed by Visram J as no misconduct proved.

6. Advocate J.M. Motanya file afresh suit HCCC. 6/03 but represent the Cheruiyot Chepkwony alias Mapengo

the new plaintiff.

2. He then brings suit against his client Sarah Chesiele Barta and the 1st suit where he was the original plaintiff.

7. Claims two acres by way of adverse possession

The said applicant then is related to Sarah Chesiele through marriage.

8. A.C. Bett gives evidence for defendant.

That suit land was family land and he divided as per her award.

9. Held

Miscarriage of justice. An advocate cannot act for plaintiff then sue the same plaintiff in a subsequent suit as a defendant. This is a conflict of interest.

That the suit has been filed to defeat just of the 2nd defendants fruits of his judgment in case 32/97.

The suit is dismissed as having no merits.

10. Case Law

11. Advocate

J.M. Motanya advocate instructed by the firm of M/S Motanya & Co. advocates for the Plaintiff – present

S.K. Chelule advocate from M/S Chelule & Co. advocates instructed by 2nd Defendant – present

1st Defendant in person - present

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

Civil Suit 6 of 2003

CHERUIYOT CHEPKWONY alias MAPENGO APPLICANT

VERSUS

SARAH CHESIELE BARTA1ST RESPONDENT

KIPLANGAT BARTA.....2ND RESPONDENT

JUDGMENT

I: Representation

1. Cheruiyot Chepkwony alias Mapengo is represented in this originating summons by M/S J.M. Motanya & Co. advocates.
2. Sarah Chesiele Barta appears in person.
3. Kiplangat Barta is represented by M/S Chelule & Co. advocates.
4. I did note in this case file that the proceedings emanated from an earlier file being HCCC. 32/97. The parties therein were

i) Kiplangat Barta Plaintiff

represented by M/S Chelule & Co. advocates

ii) Sarah Chesiele Barta

represented by M/S J.K. Rono & co. advocates

Later M/S J.M. Motanya represented the said defendant.

5. To my understanding this is a conflict of interest where you represent the plaintiff in one matter then sue the same plaintiff in a subsequent matter.
6. I require to give a brief background of this matter to understand its genesis.

II: Background fact

7. The 2nd respondent Kiplangat Barta is the brother in law to Sarah Chesiele Barta. He sued her in HCCC. 32 of 97 where he sought a declaration that the said Sarah Chesiele Barta held the land in trust of him. Originally land parcel Kericho/Kimulot/514 was registered in the name of his late brother who is husband to Sarah. He passed away and she transferred the land to herself.
8. The dispute was referred to the District Officer to determine, by Rimita J, when the award was read it was set aside on the grounds of misconduct and that the said plaintiff Kiplangat Barta did not call witnesses nor was he given such an opportunity.
9. A second reference to arbitration was made by Rimita J. This time the arbitrator was referred to as A.C. Bett, an advocate of the High court of Kenya.
10. Where the District officer held the whole land belonged to Sarah Chesiele Barta and there was no such thing as a trust A.C. Bett, arbitrator held that the land was family land was accordingly held in trust for Kiplangat Barta. That he was entitled to portion of the land.
11. Being dissatisfied with this award the said Sarah Chesiele Barta claimed misconduct and sought for the setting aside of the award. The said Hon. Judge, Visram J refused to set aside the award as he saw no misconduct had been caused.
12. There was no appeal filed to the court of appeal in this decision. Instead, a new party known as Cheruiyot Chepkwony alias Mapengo claimed two acres of land. Namely, when the case HCCC. 32/97 was being heard he was never a party neither did he participate herein. He wishes to claim two acres by way of adverse possession.
13. As stated earlier, the said Cheruiyot Chepkwony alias Mapengo in fact was represented by Sarah's advocate J.M. Motanya. She became the defendant and acted in person.

14. Evidence was called before Koome J on the claim by the Plaintiff in this case. The proceedings contained before this court under **Order 17 r 10** Civil Procedure Rules. It seems that the defendant No. 1 Sarah, gave evidence and called witness agitating her former case that she is entitled to the whole property.

15. The 2nd defendant called as evidence the arbitratix A.C. Bett who produce file No. 32/97 to court. This file confirmed her award that by the decision of this suit would inevitably alter the matters on the ground.

IV: Findings

16. The awards issued in file HCCC. 32/97 was decided amongst the parties and a decision award at, which decision was never overturned. It still stands.

17. The plaintiff in this cases wishes to overturn that decision by being heard herein. He has been heard and I find that this case has no permit. The case brought and filed herein by Cheruiyot Chepkwony alias Mapengo is duly dismissed with costs to the 1st and 2nd respondents.

DATED this 3rd day of August, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

J.M. Motanya advocate instructed by the firm of M/S Motanya & Co. advocates for the Plaintiff – present

S.K. Chelule advocate from M/S Chelule & Co. advocates instructed by 2nd Defendant – present

1st Defendant in person - present