



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Appeal 74 of 2003

SAWE TANUI CHELAGAT PLAINTIFF

VERSUS

JEPTUM TAPRANDICH SIRON DEFENDANT

JUDGEMENT

This is an appeal from the decision of the Rift Valley Land Disputes Appeals Tribunal which was adopted by the Principal Magistrate's Court at Kapsabet on 20.05.2003. The Appeal is made under the provisions of Section 8 (a) of the Land Disputes Tribunal.

The grounds of appeal raised by the Appellants substantially raise issues of law. The grounds are:-

1. That the Appeals Tribunal erred in law by entertaining the dispute which was outside its jurisdiction.
2. That the Appeals Tribunal erred in law in finding in favour of individuals who were not party to the dispute.
3. That the Appeals Tribunal erred in law by disregarding the rules of evidence in the conduct of the proceedings.
4. That the Appeals Tribunal erred in law in failing to find that the Respondent's claim was extinct by operation of law.
5. That the Appeals Tribunal erred in law in taking into account extra-legal issues to arrive at a verdict.
6. That the Appeals Tribunal erred in law by presiding over a matter that is basically governed by the Law of Succession Act.
7. That the Appeals Tribunal erred in law in entertaining the Respondent's claim when she had no locus standi for want of Letters of Administration.
8. That the Appeals erred in law in failing to find that no specific claim capable of adjudication had been filed with the relevant Land Disputes Tribunal.
9. That the Appeals Tribunal erred in law by conducting a re-hearing of the dispute instead of calling for the Land Disputes Tribunal record.

10. That the Appeals Tribunal erred in law in ordering a sub-division that had no basis.

11. That the Appeals Tribunal erred in law in commencing deliberations without ensuring that it was properly constituted.

During the hearing the Appellant abandoned Grounds 5 and 10. The Appeal is opposed.

The Appellant has raised questions of jurisdiction in grounds 1. The court is obliged to inquire into this at the outset and determine whether the Tribunal had jurisdiction or lacked it to deal with the dispute. This must be dealt with as the first issue.

From the proceedings, this is a dispute between the Appellant Sawe Tanui Chelagat and Jeptum Taprandich Siron. Jeptum Taprandich Siron happens also to be the mother of the Appellant. The Respondent claims that the disputes land belonged to her late husband; Cherigat Siron and not to her son the Appellant. She petitioned the Tribunal to find this as a fact and divide the land between herself and 4 sons including the Appellant.

The Tribunal found that 9.8 acres out of Plot No.

Nandi/Mogobich/Kibabet 1/50 which was registered in the name of the Appellant belonged to the Estate of the late Cherigat Siron. They ordered that the said portion be divided as follows:-

1. Sawe Tanui Chelagat – 3 acres

(Appellant)

2. Kibet Cherigat - 2 acres

3. John Murei - 2 acres

4. Chuma Kimibik - 2 acres

5. Taprandich Siron - 0.8 acres

The Respondent and the rest of the family claimed that the late Cherigat Siron had entrusted the purchase of the land to his son, Sawe Tanui, the Appellant. That the deceased had given a sum of Kshs. 300/= to Sawe to purchase the land. That Tanui bought the land but included the said portion to his own land which had earlier been given to him by his father.

From the foregoing facts, it is clear that the dispute relates to ownership of land, alleged trust and/or rights of inheritance to the Estate of the late Cherigat Siron i.e Succession Case.

The jurisdiction of the Land Disputes Tribunals including the Appeals committees are limited to the matters set out in Section 3 (1) of the Land Disputes Tribunal. The said provision states that:-

“3. Subject to this Act, all cases of a civil nature involving a dispute as for –

- (a) the division of, or the determination of boundaries to land including land held in common**
- (b) a claim to occupy or work land or**
- (c) trespass to land shall be heard and determined by a Tribunal established under Section 4.”**

The dispute herein clearly does not fall within any of the aforesaid areas of jurisdiction of the Tribunal. The dispute before the Tribunal was an ownership dispute touching on title and also disputes relating to Succession to the Estate of the late Cherigat Siron.

As a result, I do hereby find that the first Tribunal and consequently the Appeals Tribunal lacked the jurisdiction to deal with and determine the dispute herein. All the proceedings were a nullity ab initio. I hereby do allow the appeal and set aside the decision of the Appeals Tribunal.

It is sad that the parties have wasted precious time and incurred expense due to the misrepresentation by the Tribunals that they were clothed with the necessary legal mandate and jurisdiction to hear the dispute. It must be painful for both parties as they must now go back to the drawing board and present their claims before the Civil Courts with appropriate jurisdiction.

This Court has often recommended the repeal of the entire Land Disputes Tribunal Act. It is a piece of legislation that is wrecking havoc in our judicial system causing untold misery and suffering to thousands of litigants in Kenya. The sooner this legislation is done away with the better for the administration of justice in our country.

There shall be no order as to costs as the Appellant and the Respondent are mother and son who are both victims of the Tribunals which assumed jurisdiction they did not have.

DATED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF MAY, 2008.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Birir for the Respondent

Mr. Khayo for the Appellant