

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Appeal 48A of 2003

REPUBLIC:.....APPLICANTS

VERSUS

JOHN KEAH CHERWON:.....1ST DEFENDANT

UASIN GICH LAND DISPUTE TRIBUNAL:.....2ND DEFENDANT

R U L I N G

The applicants MONICA CHELEL MALEL and HEZRON KOSGEY had a dispute before UASIN GISHU DISTRICT LANDS DISPUTE TRIBUNAL with the respondent JOHN KEAH CHETWON over ownership of land parcel No. Turbo Settlement scheme/258. The dispute was referred to the Tribunal by the respondent. The said land is allegedly registered in the names of the applicants. The Tribunal ruled in favour of the respondent and ordered the applicants to transfer 3 acres of the land to her. The applicant filed an application for judicial Review. His said application was dismissed on 12th March 2007. He now has applied for a stay of that judgement, and in extension stay of the Tribunals award until an intended appeal is heard and determined.

Applicant's counsel deponed and it was submitted that the said judgement was delivered in absence of her client and herself. They had no notice that the judgement was to be delivered on that day. By the time they released that judgement was delivered time for filing a Notice of Appeal in court of Appeal had elapsed. However they have nevertheless filed a Notice of Appeal though late. The applicant is desirous to appeal against the judgement but the respondent has moved the subordinate court in Eldoret CM.CC.NO.66 OF 2002 to have the suit land sub-divided. If this was done applicant will suffer irreparable loss.

Application was opposed. It was deponed and submitted that there is no valid appeal in court of appeal pending as of now. Further that the applicant is the one using the land currently and if the land is subdivided and an appeal is filed and is successful then the respondent can be ordered to re-transfer the land back to the applicant. There will be no loss.

I have carefully considered the application. I am not in a position to tell weather the appeal, if any will be filed will be an arguable appeal with chances of success. It is only the court of appeal which can say that when it will be properly seized of the matter. However applicant has said that he is currently the registered owner of the suit land and lives there. That fact has not been disputed. I feel that it would be proper for status quo to be maintained until the intended appeal is filed. The applicant has explained why they have not yet appealed. They were not aware of date of delivery of judgement. To have the land subdivided and transferred would be costly. It would also mean that the applicant has to move out of the three acres to give way to respondent. If appeal is filed and succeeds that would be irreparable loss if the land will be returned to him. The respondent at no time has never been in occupation of the suit land. I believe he can wait a little longer until the issues are fully determined in the higher court.

The upshot of the above is that I allow the application but in the following terms:-

- 1) There be a stay of execution of this courts judgement delivered on 12th March 2007 and consequently the Tribunal award as adopted by the Resident Magistrate.
- 2) The stay be in effect for 90 days from today's date after which there be a mention to confirm weather appeal has been filed or not. If appeal filed the court to extend the stay orders.
- 3) Applicant to deposit in an interest earning account in the joint names of the two counsels Shs.65,000/= the sum assessed as costs within 45 days.
- 4) Costs of the application in the cause.

Dated and Delivered at Eldoret on 6th July,2007.

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:-

C/C - David

Nandwa for the applicant

N/A for Respondent