

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Misc Civ Appli 296 of 2005

REPUBLIC:.....APPLICIA
NT

VERSUS

THE CHAIRMAN KAPSABET DIVISION LAND DISPUTES
TRIBUNAL:.....RESPONDENT

KIPKEMEI RANDICH:.....INTERESTED
PARTY

JUDGEMENT

This a judicial review application for an order of certiorari under the provisions of section 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules.

The Applicant has at all material times been the registered owner of land Parcel Number Nandi/Kamoiywa/249. A dispute arose between the Applicant and the interested party and the matter was referred to the Kapsabet Division Land Disputes Tribunal. After hearing the dispute the Tribunal on 28th July,2005 awarded the entire land comprised in the said title to the Interested party. The said award was adopted and entered as judgment of the Principal Magistrate's court at Kapsabet in LDT No.35 of 2005. A decree was then issued on 31st October,2005.

The main ground in this application is that the decision of the Tribunal was ultra vires since it did not have jurisdiction to adjudicate on a dispute touching on registered land. In his submissions, Counsel for the interested party conceded that the Tribunal had no jurisdiction. However, he submitted that the Exparte Applicant was not entitled to costs as she is the one who lodged a claim with Tribunal and moved it in the first place. That she only came to this court after losing at the Tribunal.

The Applicant's counsel, in reply, stated that the interested party was an active participant in the proceedings before the Tribunal where he filed, in effect, a counter-claim. That it was on the basis of the counterclaim that he was award the land in dispute.

I have considered the application and the submissions by counsel. It is common ground that the Tribunal lacked jurisdiction to determine questions or disputes relating to title and ownership of registered land. I agree with this position.

The interested party was entitled to defend the claim before the Tribunal and to make his own claims once he appeared there. It is the Applicant who initiated the litigation giving rise to these proceedings.

The result is that I do hereby grant prayer (a) of the Notice of Motion dated 9th December,2005 and quash the decision of the Kapsabet Division Land Disputes Tribunal dated 28th July,2005.

In exercise of this court's inherent jurisdiction and supervisory powers over the subordinate court and to make the result of these proceedings effectual I do hereby order that the Decree of the Principal Magistrate's court in LDT No.35 of 2005 shall be held in abeyance and shall not be enforced whatsoever.

The interested party may institute his claim against the Exparte Applicant in the Civil court with appropriate jurisdiction.

There shall be no order as to costs.

DATED AND DELIVERED AT ELDORET ON THIS 25TH DAY OF MAY,2006.

M.K. IBRAHIM

JUDGE