



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Misc Appli 195 of 2005

REPUBLIC:.....APPLICANT

AND

THE CHAIRMAN NANDI HILLS DIVISION1st RESPONDENT

LAND DISPUTES TRIBUNAL

THE SENIOR RESIDENT MAGISTRATE,2ND RESPONDENT

KAPSABET LAW COURTS

AMBROSE TROREY KIRIONGI.....INTERESTED PARTIES

AND GILBERT KIPRONO KIRIONGI

(EX-PARTE ERNEST K. A. KIRIONGI)

JUDGEMENT

On the 16th May,2005 the Nandi Hills Division Land Disputes Tribunal delivered its decision and award in Land Dispute Tribunal Case No.127 between Ambrose Tororey Kiriongi and Gilbert Kiprono Kiriongi the interested parties herein on the one part and Ernest K.A. Kiriongi, the Ex parte Applicant on the other. The dispute was in respect of all that piece of land parcel Number **NANDI/KEBEN/127** which at all materials times was registered in the name of the Ex parte Applicant. All the parties are brothers.

The Tribunal decided to divide the said property and award it as follows:-

- 1. Gilbert Kiprono Kiriongi - 8 Acres
- 2. Ernest Kiriongi - 13.7 Acres.

Total 21.7 Acres.

The Ex parte applicant was aggrieved by this decision and filed this application under the provisions of sections 8 and of the Law Reform Act and Order 53, Rule 3 of the Civil Procedure Rules for the following Orders:-

- a) An order of certiorari be and is hereby issued to remove into the High Court and quash the decision of the Nandi Hills Land Disputes Tribunal dated 16th May,2005.

b) An order of prohibition be and is hereby issued prohibiting the Senior resident Magistrate's court at Kapsabet from adopting or otherwise enforcing the decision of the Nandi Hills Division Land Disputes Tribunal dated 16th May,2005 lodged in Kapsabet Senior Magistrate's Court Land Disputes. Award No. 14 of 2005.

After hearing the application for which leave had been obtained and after considering the submissions by counsel, I find that there are two issues for the determination of the court. These are:-

1. Whether the Applicant has complied with the provision of Rule 7 of Order 53 by lodging a copy of decision/order of the Tribunal by verified affidavit in court.
2. Whether the Land Disputes Tribunal had jurisdiction to adjudicate on a dispute touching on registered land.

The Applicant filed a verifying Affidavit sworn on 28th September,2005 together with the chamber summons dated 29th September,2005 for leave to file the application for judicial review orders. This affidavit is required to verify the facts relied upon. The applicant annexed a copy of the decision of the Tribunal to the said verifying Affidavit. It was marked as Exhibit No. "EKAK(3b)".

In my view, the decision of the Tribunal has been produced in court as an exhibit and it has been verified by the verifying Affidavit sworn on 28th September,2005. Verification does not mean certification. I find that the copy of the decision has been sufficiently verified and the interested party does not state that it is not the correct document.

The property herein has at all material times been registered in the name of the Applicant. It still is. The effect of the decision is that the Tribunal would have adjudicated on a dispute touching on registered land and ownership thereof. This it cannot do. The Law on this issue is clear, that the Land Disputed Tribunals have no jurisdiction to decide on matters of title and ownership to land. The claim of the interested parties herein is based on a claim of trust. This can only be litigated in the civil courts with appropriate jurisdiction.

The end result is that this application must succeed and I do hereby grant prayers (a) and (b) of the Notice of Motion dated 11th October,2005. Costs of this application shall be paid by the 1st Respondent to the Ex parte Applicants. Orders accordingly.

DATED AND DELIVERED AT ELDORET ON 22ND MAY,2006.

M. K. IBRAHIM

JUDGE

Coram - Ibrahim, J

C/C - Chelanga

Mr. Keter holding brief for Mr. Gicheru for the Applicant.

No Appearance for the interested parties.

Ruling read in the presence.

M. K. IBRAHIM

JUDGE.