

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Misc Civ Appli 186 of 1999

REPUBLIC:.....APPLICANT

VERUS

CHAIRMAN AND MEMBERS OF KILIBWSONI LAND DISPUTE

TRIBUNAL & 4 OTHERS RESPONDENT

JUDGEMENT

This application Under Order 53, Rule 3 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act seeks the following orders:-

1. An order of certiorari do issue to bring to this Honourable court and quash the proceedings of the Kilibwoni Land Disputes Tribunal of 13th October,1998 and to subsequent decision delivered on 16th October,1998 in the Tribunal's Dispute No.22 of 1998 concerning and about all that piece of Land known as **NANDI/KEBEN/72**.
2. An order of certiorari do issue to this Honourable court and quash the Judgement of the Kapsabet Principal Magistrate's court on 9th September,1999 and its subsequent decree issued on 4th October,1999 in Principal Magistrate Court Land Dispute No.45 of 1998.
3. An order of prohibition do issue prohibiting the Kapsabet Principal Magistrate or the Executive Officer of the Kapsabet Magistrate's Court from signing for or on behalf of the applicant any documents effectuating the excision and transfer of ten (10) acres of land from the suit land in favour of Prisca Koros, the interested party herein, or in any way whatsoever giving effect to the decision of the Kilibiwoni Land Disputes Tribunal of 16th October,1998.
4. That costs of this application be provided for.

The Applicant is the a registered owner/proprietor of all that land known as Nandi/Keбен/72, measuring about 10.9 hectares. The interested party who is a sister to the Applicant lodged a claim to a portion of the land with the Kilibowni Land Disputes Tribunal. The interested party's claimed that she was entitled to a portion of the land for her use and occupation since she was not married and the land belonged to her deceased father. She claimed that she was entitled to one half share of the land as their father left the Applicant and herself as the only heirs and beneficiaries to his Estate.

Upon hearing the disputes the Tribunal awarded 10 acres out of the said land to the interested party. She lodged the Award with the Principal Magistrate's court at Kapsabet which adopted and entered it as its judgement on 9th September,1999.

The Applicant's has one principal ground in challenging the said decisions, namely that the Tribunal acted in excess of its jurisdiction when it made its award. It was submitted that the effect was to interfere with the title to the land and impeachment thereof. The Applicant through counsel submitted that the Tribunal lacked jurisdiction under the Land Disputes Tribunal Act to decide on matters of ownership and/or title to land.

Neither the Respondent nor the interested party attended the hearing of the application. I am satisfied that they were both served with the application and hearing notices.

Upon consideration of the application and submissions, I am satisfied that the Kilibowoni Land Disputes Tribunal did not have jurisdiction to decide on matters or questions of title to land. The interested party ought to have fitted her claim with the civil courts which have appropriate jurisdiction. She also should have considered investigating how her brother obtained title to the land and if it was through succession proceedings whether the court considered her rights as a beneficiary.

As a result, I do hereby allow application dated 25th November, 1999 in terms of prayers 1, 2 and 3. Prayers 4, 5 and 6 are disallowed as the parties therein were not served with the applications and their inclusion totally unnecessary at this stage. Since this matter involves family dispute and the interested party may have gone to the Tribunal due to ignorance. I do hereby make no order as to costs.

DATED AND DELIVERED AT ELDORET THIS 16th DAY OF MAY, 2006

M. K. IBRAHIM

JUDGE