



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**Civil Suit 26 of 2001**

**EMILY JEPKEMEI NGEYONI .....1<sup>ST</sup> PLAINTIFF**

**JULIUS RANDICH.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**NICHOLAS KIPCHUMBA KOGO .....1<sup>ST</sup> DEFENDANT**

**CHAIRMAN KABİYET LAND DISPUTES .....2<sup>ND</sup> DEFENDANT**

**RULING**

This is a case that was filed by way of plaint. The defendant filed a defence.

On the 2<sup>nd</sup> November 2005, Mr. Kigamwa who appeared for the defendants raised a preliminary objection in the matter. He argued that the proceedings herein, were an attack on a decision of a quasi Judicial body. That was clear from the contents of paragraph 10(a) (b) and (c) of the amended plaint. In his view, the only remedy available to the plaintiff was through Judicial review under order 53 of the Civil Procedure Rules. Secondly, this court lacked jurisdiction to entertain the matter as the plaintiffs were challenging the decision of a Land Disputes Tribunal. That challenges should have been through appeal to the Provincial Appeals Committee and then to the High Court. His third point of objection was that the plaintiff was challenging the execution of a decree, which can only be done in the file in which the execution was issued. He sought to rely on section 34 of the Civil Procedure Act (Cap. 21).

Fourthly, the amendment of the plaint required the consent of the parties or the court under Order VIA rule 7 of the Civil Procedure Rules. That consent was not given, therefore the suit should be dismissed.

Mr. Birech for the plaintiff opposed the preliminary objection. His contention was that the plaintiff raised several issues which could only be determined after evidence had been taken and ventilated. These issues included the contention that the transfer of land was done in 2000, while the owner died in 1996. These matters could only be dealt with through evidence, and not a preliminary objection. Secondly, after the plaintiffs took out letters of administration, they were completely locked out. That also could only be determined through evidence.

He submitted further that the High Court had unlimited original jurisdiction. They were seeking declaratory orders, which were not available through judicial review. He submitted that the proceedings in the Tribunal and lower court were a nullity. That issue could only be determined by this court.

On the issue of the date when the amended plaintiff was amended without leave, he submitted, that the respondent's counsel had not indicated what prejudice the defendant would suffer. His position was the defendant should have come under Order VIA rule 2(1) to have the amended plaintiff disallowed.

In a brief response Mr. Kigamwa submitted that the unlimited jurisdiction of the High Court is exercisable in terms of laws passed by Parliament as provided for under Section 60(2) of the Constitution.

I have considered the submissions of both counsel. This preliminary objection raises a number of points.

The law on proceedings and challenges to decisions of Land Disputes Tribunals are governed by the provisions of the Land Disputes Tribunals Act No. 18 of 1990. Under section 7 of the Act, the Chairman of a Tribunal is required to cause the decision of the Tribunal to be filed in the magistrate's court. Subsection (2) requires the magistrate's court to enter judgment in accordance with that decision of the Tribunal and issue a decree for enforcement under the Civil Procedure Act (Cap. 21)

Section 8 of the Act allows any party who is aggrieved by a decision of a Tribunal to file an appeal to the Provincial Appeals Committee within 30 days. A further appeal on points of law can be filed to the High Court.

From the submissions of counsel for the parties and documents filed herein, the Kibiyet Land Dispute Tribunal made an award on 5<sup>th</sup> April 1995. They awarded 10 acres of the subject land to Nicholas N. Kogo. They also awarded 22.5 acres to Emily Jepkemei Ngeyoni jointly with Jasang Kobot Jepkosgei. This award was registered in the Kapsabet Senior Resident Magistrates court on 8<sup>th</sup> June 1995, and a decree issued. No appeal was filed, before the Tribunal's award was registered in court.

Then Jasang Kobot Jepkosgei died. Eldoret H.C. P & A No. 94 of 1999 was filed and letters of administration were issued to Emily Jepkemei Ngeyoni and Julius Randich on 6<sup>th</sup> July 2000. The said two administrators claim that, on doing a search, they found that, the land was fraudulently subdivided. This suit was consequently filed by Birech & Company advocates on 12/2/2001. Later an application was filed to amend the plaintiff to join the Kibiyet Land Disputes Tribunal as a party, thus challenging the Tribunal's decision in this suit.

I have considered the arguments for both counsel on whether the Land Disputes Tribunals decision can be challenged in this court by way of suit. In my view, that is not legally possible. The two options for challenging a Land Disputes Tribunal's award are through an appeal to the Provincial Appeals Committee, within 30 days, and before the award was registered in the magistrates court. The other option was to file proceedings for judicial review in the High Court under Order LIII Civil Procedure Rules, after the decision of the Tribunal was registered with the magistrate's court. Therefore it is my finding that the decision of the Land Disputes Tribunal cannot be challenged through a suit. As the decision of the Tribunal was registered in the subordinate court filing suit would, in any event, be fresh proceedings, in a matter in which a decree of the subordinate court has already been issued. Filing multiplicity of cases in court on the same matter is not acceptable in law.

I agree with Mr. Kigamwa that the decision of the Land Disputes Tribunal herein, a quasi Judicial body, could only be challenged through an appeal to the Provincial Appeals committee, within 30 days, or through judicial review proceedings in the High Court under Order LIII Civil Procedure Rules, after it was registered by the Kapsabet Magistrate's court.

Mr. Kigamwa's second point of objection is that the amendment of the plaintiff should have been consented to by the parties or be with leave of court; in terms of Order VIA Civil Procedure Rules.

Indeed there is an application for leave to amend plaint dated 20<sup>th</sup> May 2004 filed by Birech, Ruto & Company advocates on behalf of the plaintiffs. Mr. Kigamwa argues that no leave was granted, as the amended plaint does not state the date when leave was granted. Mr. Birech has argued that; if that was an error, then it only goes to the form, not the substance.

I have perused the record in the file. I find that on 26/5/2004, the application for amendment of the plaint was allowed. Therefore leave to file an amended plaint was granted by the court. I will agree with Mr. Birech that the fact that the date of leave for amendment does not appear on the amended plaint, can only but be a defect in form, not in substance. That objection therefore fails.

I now turn to the objection by Mr. Kigamwa that the plaintiffs are challenging execution which can only be done in the file in which decree was issued. Paragraph 10c of the amended plaint clearly challenges the execution of the decree which was issued by the Kapsabet Magistrate's Court. Challenges to execution of that decree can only be done in the file in that court. That is the import of section 34 of the Civil Procedure Act. I agree with Mr. Kigamwa that, challenge the decree of the Kapsabet Magistrate's court can only be done in Kapsabet court.

The award of the Land Disputes Tribunal could be irregular, or even a nullity. However, it can only be challenged through the existing legal regime. The plaintiffs are following the wrong procedure by filing the amended plaint before this court, to challenge the decision of the Land Disputes Tribunal and its execution. They should have followed the right legal machinery.

The amendment to the plaint was merely to join the Tribunal as a party and to challenge the decision of the Tribunal. This court cannot entertain the amended plaint. It is not sustainable in law. I therefore have to strike it out. That will leave the original plaint still alive on the file.

For the above reasons I uphold the preliminary objection, and strike out the amended plaint with costs to the defendants.

Dated and delivered at Eldoret this 13<sup>th</sup> day of June 2006.

**George Dulu**

Ag. Judge

In the presence of –