



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

MISCELLANEOUS APPLICATION NO. 134 OF 2003

REPUBLIC.....APPLICANT

V E R S U S

NANDI DISTRICT DISPUTES TRIBUNAL (KIPKARREN)....RESPONDENT

CHRISTINE JEPKESIO SAWE.....INTERESTED PARTY

ALFRED K. KABUS.....EX – PARTE

RULING

Alfred Kabus, who is the applicant herein seeks an order of certiorari to quash the decision of 11/3/2003, by the Nandi Land Disputes Tribunal (hereinafter referred to as the ‘the Tribunal’), and in which the parties were this applicant and Christine Jepkesio Sawe who is the interested party herein. He bases his application on several grounds, but mainly that the Tribunal lacked the relevant jurisdiction to transact over the matter, which revolved around land parcel No. NANDI/CHEPTERWAI/499 and the Estate of a deceased person. I shall hereinafter refer to the aforementioned land parcel as ‘the subject property’. It is also his ground that the action was also time barred. The brief facts of this application are that the interested party instituted a claim against the applicant before the Kipkarren Land Disputes Tribunal, claiming a share of the subject property on behalf of her son, one John Hillary Kiplagat Leley, who she alleged was the adopted son of the late Tapratich Birir. After its deliberations, the Tribunal awarded her half of the subject property, and its decision was read and adopted as the judgment of Kapsabet Principal Magistrate’s Court on 8/4/2003 vide Land Dispute Tribunal Case No. 15 of 2003.

The interested party, therefore challenges this application, and she is of the opinion that the Tribunal was duly empowered to deal with the matter as this applicant had failed to disclose that the deceased had distributed the subject property after obtaining a Grant of Confirmations of Letters of Administration of the Estate. It was the submission of Mr. Keter for the Applicant, that the subject property was registered land and thus the effect of that decision was to cancel that Title in a matter which also revolved around Succession all of which issues were beyond the jurisdiction of the Tribunal. He therefore urged this court to quash the decision of the Tribunal. Mr. Mitei, Learned Counsel for the interested party, was of a different view, for it was his submission, that the Tribunal had acted within its jurisdiction, and that its decision was valid.

I have taken into account the pleadings in this cause as well as the submissions of both counsel and it is common ground that at the material time, the subject land was already registered. It is also not in dispute that the issues arising in the matter that the interested party had referred to the Tribunal revolved around, the Estate of one Birir, who was her late father, and that the succession cause had already been filed in

court at Kapsabet. It cannot be gainsaid that the issues which were raised before the Tribunal, revolved around the issue of the ownership of the title to the subject land, and since the applicant was the registered proprietor of the subject property, the issue would not fall within the mandate of the Tribunal, as is described above. Indeed the effect of such registration was to confer upon the applicant an indefeasible title as envisaged in section 27 of the Registered Land Act, which right can only be interfered with by the courts whose powers are well catered for under section 159 of the same Act wherein it is stipulated that “civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matter in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate’s Court, or, where the dispute comes within the provisions of section 3 (1) of the Land Disputes Tribunal Act in accordance with that Act”.

Section 3 (1) of the Land Disputes Tribunals Act No. 18 of 1990 which is referred to above and which section confers upon all Land Disputes Tribunals with stipulated powers empowers Land Disputes Tribunals to deal with all cases of a civil nature involving disputes as to:

- (a) the division of, or the determination of boundaries to land, including land held in common;
- (b) a claim to occupy or work land; or
- (c) trespass to land,

shall be heard and determined by a Tribunal established under section 4. It is clear from the above that the Tribunals were set up to adjudicate upon the aforementioned issues only, and not on any other issue, and for which reason the Tribunal would have no jurisdiction to interfere with a title, in the manner that it did in this case. It is my humble opinion that the Tribunal had no jurisdiction to adjudicate on the aforementioned issues, and since jurisdiction is of paramount importance in any proceedings before a tribunal or a court for that matter, a body that acts without the relevant jurisdiction renders its actions and therefore its decisions null and void ab initio. I do therefore allow this application in its entirety and grant the applicant orders in terms of his prayer 1. The applicant shall also have the costs of this application.

Dated and delivered at Eldoret this 14th day of June 2005.

**JEANNE GACHECHE**

**Judge**

Delivered in the presence of:

Mr. Mutei for the interested party

No appearance for the respondent

Mr. Keter for the applicant