



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC. CIVIL APPLICATION NO.69 OF 2003

REPUBLIC APPLICANT

VERSUS

KOSIRAI LAND DISPUTES TRIBUNAL RESPONDENT

AND

JOSEPHINE J. BIRGEN 1ST INTERESTED PARTY

MARY J. KERING 2ND INTERESTED PARTY

RULING

This is an application by way of Notice of Motion brought under Rule 3 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act (Cap.23). The application is challenging the decision of the Kosirai Land Disputes Tribunal dated 5th December, 2002 and the subsequent order adopting the said award dated 11th February, 2003 in Kapsabet PMCC Land Case No. 52 of 2002. Though the State Counsel Kisumu and Lel & Associates advocates were served for the respondent and interested parties respectively and a return of serve filed, they did not appear and the application was heard in their absence.

The grounds of the application were that the Land Tribunal lacked legal mandate to hear and determine the dispute as there was title to the suit land i.e. **Nandi/Cheptarit/102**, that the Tribunal's decision was ultra vires, and that the Tribunal did not have mandate to deliberate on the dispute involving succession and gift intervivos and therefore the Tribunal's award is contrary to statute and null and void ab initio . The application is supported by an affidavit sworn by Kipkieng Arap Kebenei dated 21st March, 2003. The deponent is the registered proprietor of the subject parcel of land. A replying affidavit in opposition to the application sworn by one of the interested parties Josephine Birgen sworn on 5th August, 2003 was filed.

Counsel for the applicant Mr. Gicheru submitted that their application dated 21st March, 2003 was seeking to quash the decision of the Land Tribunal dated 5th February, 2003 and subsequent order adopting the Tribunal's decision by the Principal Magistrate's Court at Kapsabet. He submitted that the Tribunal did not have jurisdiction to hear and entertain the proceedings and make an award. The land in question was registered under the Registered Land Act and was therefore outside the purview of the Land Tribunal. Secondly the Tribunal could not subdivide the land to children of the proprietor of the land as the proprietor was still alive. He referred me to the case of **Kisumu Court of Appeal Civil Appeal No. 23 of 1985 – Leonida Nekesa –versus- Musa Wanjala; Eldoret HCCC.55 of 1998 – Daudi Ngetich Kimibei –versus- Attorney General and Another; and Nyeri Court of Appeal Civil Appeal No. 189 of 1996 – Muriuki Marigi – versus- Richard Marigi Muriuki and Others**. All these cases confirm that

registered land of a father cannot be distributed to children or a wife while the proprietor is still alive. He also submitted that the proceedings taken before the Land Tribunal were in any event statute barred as twelve years had lapsed from the time of registration to the time that proceedings before the Tribunal were taken.

I have considered the documents filed in this application, the submissions of counsel and the authorities quoted to me. I am satisfied that on the basis of the law as expounded in the authorities referred to me, the Land Tribunal erred in dividing the land that was registered under the provisions of the Registered Land Act to the interested parties (who claim to be children of the registered proprietor), while the registered proprietor is still alive, as it had no legal basis for doing so.

In the circumstances, therefore, I quash the decision of the Kosirai District Land Disputes Tribunal dividing the suit land to wit Nand/Cheptarit/102 between Josephine J. Birgen, Mary J. Kering and Kipkieng Arap Kebenei dated 5th December, 2002 and the subsequent order adopting the said award dated 11th December, 2003 in Kapsabet PMCC Land Case No.52 of 2002. I order that the land rightfully belongs to Kipkieng Arap Kebenei.

I award Costs of the Application to the applicant.

Dated and Delivered at Eldoret this Day of 2004.

George Dulu,

Judge

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I certify this a true copy of the Original
DEPUTY REGISTRAR