

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO.448 OF 2000

MIRIAMBI OLE SONDAI ::: APPELLANT

VERSUS

NAHASHON KINUTHIA HINGA ::: RESPONDENT

RULING

When this appeal came up for hearing, Mr. Ngare for the Respondent raised certain matters, which he termed “a Preliminary Objection”. In my view, the same was completely unnecessary and ought to have been argued in the normal manner in his opposition to the appeal. The effect of his objections has been to achieve no more than prolong this old dispute. What were those matters?. The first point Mr. Ngare argued was that the appeal was ambiguous as it was unclear which order was being appealed from. The short answer to this was given by Mr. Kabiru for the Appellant. The appeal was against the order of the lower court dated August 21, 2000. This is clear from the face of the Memorandum of Appeal.

Mr. Ngare also challenged the order appealed from saying it has not been signed by the Magistrate nor the Executive Officer of that court. I have looked at the order in question. It was issued at Nairobi on May 7, 2001 and was certified by the Principal Deputy Registrar of this Court. Mr. Ngare did not refer this Court to any requirement that a judicial officer who gives an order must sign it. In general practice, once a judicial officer gives an order, a party who desires to extract it in form has it issued by a competent officer who signs when he issues it. Mr. Ngare did not also refer me to any authority to the effect that an order given at Kajiado cannot be issued from Nairobi. Even if that were the case, he did not guide this Court as to the consequences of such a default. In any event, the order impugned was issued by the Court which certified it as correct. It would be unfair to punish the Appellant for no fault of his own. Mr. Ngare also suggested, without any legal foundation, that the order in issue was incomplete as it did not include a certain statement or order at the foot of the Ruling. He did not show that that statement was necessary for the efficacy of the Order for purposes of this appeal and I was perturbed with the logic of his argument along these lines.

Mr. Ngare also argued that the prayer in the Memorandum of Appeal could not be granted by this Court. In his appeal, the Appellant sought that the appeal be allowed and the suit be referred to the Senior Resident Magistrate Kajiado for hearing of the application for stay pending appeal to the Provincial Appeals Board. Mr. Ngare referred to several provisions of the Land Disputes Tribunals Act (No.18 of 1990) but I do not see how any of them would bar a party from moving to Court to seek stay pending appeal to the Provincial Appeals Board. There is also no provision in that Act which says that once the decision of the Tribunal was filed in the Magistrate’s Court the jurisdiction of the Appeals Committee was ousted as was argued by Mr. Ngare. The Act provides statutory avenues which cannot be shut unless one failed to utilize them within the prescribed time. In the course of his submissions, Mr. Ngare did not show to me that the time for utilizing the available statutory avenues had come to a close when the decision of the Tribunal in issue was filed in the Magistrates Court for adoption as a decision of the Court. In my view, these are matters which must be ventilated at the hearing of the appeal itself.

Finally, Mr. Ngare argued that the appeal had been overtaken by events since the Respondent had, pursuant to the award of the Tribunal, obtained title deeds and sub-divided the land in dispute. Without going into detail, this is a value laden judgment. Does Mr. Ngare suggest that his client has taken steps to render these proceedings nugatory? That, as was pointed out by Mr. Kabiru, is the effort of this appeal. That will be resolved at the full hearing of the appeal.

I, therefore, do not find any merit in the objections raised by Mr. Ngare for the Respondent and I hereby dismiss them with costs to the Appellant.

Dated and Delivered at Nairobi on this 25th day of February, 2004

ALNASHIR VISRAM

JUDGE