



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Misc Appli 103 of 2003

MOSES L. KORINKO

SIMON TIEPOON & 4 OTHERSAPPLICANTS

VERSUS

CHIEF LAND REGISTRAR

DISTRICT LAND REGISTRAR TRANSMARA RESPONDENTS

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RULING

The Applicants sought in their Notice of Motion dated 12.8.2003 orders of certiorari to remove into this court for quashing the decision of the Chief Land Registrar dated 14.7.2003 contained in the Kenya Gazette of 25th July 2003 expunging from the Land Register the Title Deed relating to the numerous land parcels referred to in the hearing of the said motion.

The affidavit verifying the facts relied on in the Motion was sworn on 12.8.2003 by Moses Lamashon Korinko of Kilgoris and had five (5) annexures.

In a nutshell, the deponent averred in the affidavit that he was one of the 428 persons registered as proprietors of parcels of land subdivided from the land formally known as SHARTUKA GROUP RANCH which was registered in Shartuka registration Section in Transmara District. The District Land Registrar, Transmara, published in the Kenya Gazette of 25th July 2003 gazette notice No. 4984 which read as follows:-

“PURSUANT to the Court of Appeal Order dated 15th September, 1998, in civil application No.

and powers of rectification of the land registers under part X of the Registered Land Act (Cap. 300) of the Laws of Kenya.

And in consideration, the Court ordered that the 1992

register for Members of Shartuka Group Ranch is the only legitimate register for determining the bona fide members of Shartuka Group Ranch in issuance of land title deeds. The second register of new members of Shartuka Group Ranch was found to be fraudulent and void. And whereas it has come to the notice of this office that there are persons/organizations holding land title deeds issued under the second register in contravention of the court order. And whereas a notice has been issued to all non bona fide members of Shartuka Group Ranch to surrender titles and any possession of land in contravention of the Court of Appeal Order, under ref. TM/Shartuka/32/36 of 1st April, 2003, which notice can

be viewed at the District Land Registrar's office, Trans Mara District and the District Commissioner's office

Be it known by all affected persons/organizations that:

a) All titles issued to non-bona fide members of Shartuka Group Ranch contrary to the Court of Appeal Order have been Expunged from the land registers and therefore are now Null and void.

b) Any person/organization holding a title deed or is in Possession of any parcel of land in contravention of the Court of Appeal Order, and having been duly notified risks Prosecution for contempt of Court."

Prior to the publication of the said Kenya Gazette Notice, the District Land Registrar, Transmara had affixed a notice at his office in which he tabulated the number of the plots found to have been irregularly issued to non-members of Shartuka Group Ranch in the court order given in the C.A. Civil Application No. 195 of 1998 at Nairobi. The affidavit averred that the ex parte applicants were described as non bona fide members of Shartuka Ranch by the District Land Registrar in his notice marked as annexure 3.

The ruling of the Court of Appeal on which the land Registrar based his gazette Notice No. 4984 was in the Court of Appeal application No. 195 of 1998. The Applicants did not annexe it to the application initially but after they obtained leave to file a further affidavit, they annexed it to the further affidavit. Moses Lamashon Kirinko stated in paragraph 7 of his verifying affidavit that he knew of his own knowledge that the Court of Appeal order on which the Chief land Registrar purported to act "was declared by the same court to have been spent or to have elapsed after the substantive appeal thereto was struck out." The copy of the Court of Appeal ruling attached as annexure 4 related to civil application No. Ca 243 of 2002 which sought orders for leave to bring contempt proceedings against various respondents including the Chief land Registrar. The Court of Appeal stated in its ruling

"..... The application (No. 243/2002) was based on certain orders made by the Court pending the hearing and determination of an intended appeal. Such appeal was indeed filed. It was civil appeal No. 237 of 1998. The Appeal was struck out on 11th July 2000 as being incompetent. Once the appeal was itself struck out, all orders made under Rule 5(b) of the Rules of this court pending the hearing and determination of the appeal automatically stood spent. As the orders are spent we cannot grant any leave...."

The Court of Appeal order dated 4.6.2003 was made in an application in an intended appeal against the ruling and orders of the High Court at Kisumu dated 15.7.98 in HCCC No. 149 of 1998. In the further affidavit sworn on 16.1.2004 by the 1st Respondent and filed on 8th March 2004 following leave granted on 24.11.2003. It was argued that C.A. Civil appeal No. 237 of 1998 was the appeal from the

Ruling of the High court of Kenya at Kisumu dated 15th July 1998 in which the order dated 15.9.1998 was made in Civil App. No. 195/98.

Although the order striking out the appeal was not annexed it is clear from C.A. Civil application No. 243 of 2002 that appeal No. 237 of 1998 which was the basis on which the ruling No. 195/98 strength on which hinged and on the Respondent relied in his Gazette Notice No. 4984 was struck out.

The application for leave was wrongly framed in that the Republic was shown to be the applicant. The case of FARMERS BUS versus TRANSPORT LICENCING (1959) EA 779 will show that this was wrong. In an application for leave, the State is not involved. In the Motion, the Applicant is the Republic. The heading on the motion in the instant case was wrong. There are important matters but in view of the fact that they are procedural, I shall not strike out the Motion or declare it incompetent. To do so would be to fail to recognize that rules of procedure should serve as handmaidens of justice so that where the court has discretion and there is no irremedial prejudice to the other party, a court of law ought not to dismiss a suit on account of such breach.

It is my finding that the Gazette Notice No. 4984 by the Transmara District Land Registrar dated 25.7.2003 hinged on the Ruling of the C.A. in CA Civil Application No. 195 of 1998 in its purport that the plots it enumerated were irregularly issued but as the appeal No. 237/98 on which the Ruling had been issued was struck out the Gazette Notice lost the legal basis on which it had been issued. No longer could the Land Registrar purport to have legal justification to make the claim regarding irregular issuance of plot to non members of Shartuka Group Ranch.

In the result, an order of certiorari shall issue to remove into this court for quashing the decision of the Chief Land Registrar dated 14.7.03 contained in the Kenya Gazette of 25.7.2003 purporting to expunge from the Land Register as null and void title Deeds relating the parcels referred to in the said Gazette Notice and the application. Costs of this application shall be borne by the Respondent.

Dated at Kakamega this 4th day of June 2004

G.B.M. KARIUKI

J U D G E

4.6.04

Coram: G.B.M. Kariuki J

C/Clerk – Mudoto

Mr. Samba for Mrs. Asati

N/A for Respondent

Ruling of the court read in open court on 4.6.2004.

G.B.M. KARIUKI

J U D G E