

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
IN THE MATTER OF THE LAND
DISPUTES TRIBUNAL ACT NO 18 OF 1990

CIVIL APPEAL NO 863 OF 2001

KISANDA KILANDA ENTERPRISES LTD APPELLANT

VERSUS

LETEIPA EKEDIENYE OLE KISUA & 2 OTHERS RESPONDENTS

RULING

This is an application stated to be brought under Sections 68 and 78 (2) of the Civil Procedure Act (Cap 21). In it, the Respondents to this appeal seek the following orders:

- “1. THAT the status quo issued on 6 th August, 2002 be se t aside***
- 2. THAT the Appeal herein filed be struck out and dismissed, as it has been lodged by a non -entity***
- 3. THAT the appeal herein filed be struck out and dismissed, as no leave was granted, being barred by Section 68 of the Civil Procedure Act***
- 4. (Costs)”.***

The application was supported by an affidavit sworn by one Leteipa Ole Kisua on 26th October, 2004.

I have carefully perused the application and the supporting affidavit and considered the submissions advanced before me by the Respondent’s Advocates and I am completely unable to understand the substance of the application. The confusion is borne out by the following matters.

Mr Kinyanjui for the Respondents began his submissions before me by saying that the Appellant was a non-entity and did not have capacity to sue or be sued yet in paragraph 5 of the supporting affidavit it was stated that the Appellant was a body corporate. There was also annexed to the affidavit in support of the application an exhibit marked “LOK 1” which shows that the Appellant was sued by the Respondents in what appears to be a related action. In any event, it is clear that the Appellant is a firm which is entitled under Order XXIX Rule 1 of the Civil Procedure Rules to sue or be sued in the firm name. The fact that Mr Julius Hailepo Totona swore affidavits on its behalf did not mean that he (Mr Totona) became the Plaintiff neither did it mean that he was “representing” it as suggested. There was also evidence from the Replying Affidavit of Mr Julius Hailepo Totona that he was the secretary of the Appellant and I did not see any reason to disbelieve that he was as such and that he was competent to swear affidavits on behalf of the Appellant.

Mr Kinyanjui also argued that the appeal was incompetent since no leave to appeal was obtained. In this submission, he referred me to Section 67 but that Section does not deal with issues of leave to appeal. It also appears that Mr Kinyanjui meant to argue that this appeal should have been against a decision of a lower court and not against that of the Provincial Land Tribunal Disputes Appeals Committee – Rift Valley Province but Mr Ritho for the Appellant and indeed his client had an immediate answer to that. They were not aware of the alleged order of the lower court which, in any event, was served upon them after this appeal had been commenced. In fact, this appeal was instituted before the

making of the order referred to by the Respondent's Counsel.

Mr Kinyanjui went even further and argued that the appeal was bad as it was based on improper grounds. I do not think that he could argue that at this point in time. Whether the appeal was based on proper grounds or not is a matter to be decided at the hearing of the appeal.

Finally Mr Kinyanjui argued that the Appellant had delayed in prosecuting its appeal while the "status quo" was oppressive to his clients. Although I sympathize with this argument, I am unable to fault the Appellant as it is plain to me that the delay in prosecuting the appeal has not been occasioned by the Appellant. I was informed from the bar by Mr Ritho that the appeal has not been admitted but I do not know the reason for this. I suggest that both parties take urgent measures to ensure that the appeal is processed expeditiously since the dispute involves land and I have no doubt that any undue delay will cause anxiety to the litigants who deserve to have their rights determined without unreasonable delay and expense.

In the result, I do not find any merit in the Respondents' application dated 26th October, 2004 and I dismiss the same with costs.

Dated and delivered at Nairobi this 8th day of December, 2004.

ALNASHIR VISRAM

JUDGE