



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

MISCELLANEOUS CIVIL APPLICATION NO. 120 OF 2005

REPUBLIC.....APPLICANT

VERSUS

RONGO DIVISIONAL LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

RONGO RESIDENT MAGISTRATE'S COURT.....2ND RESPONDENT

AND

GIDEON GILBERT OCHIEL.....1ST INTERESTED PARTY

JANE AKUMU MIGWAMBO.....2ND INTERESTED PARTY

RULING

1. This was an oral application made by Mr. Ochwangi, Counsel for the 2nd interested party in this matter to clear the ambiguity that has resulted in the interpretation of the court order made on 13th April, 2011 by Justice Makhandia in dismissing the notice of motion filed in court on 26th July, 2005.
2. The object of this ruling is to clarify who, of the interested parties herein, was the one in whose favour the court order of 13th April, 2011 was made. It is a short ruling.
3. This second (2nd) interested party in this matter was Jane Akumu Migwambo. The applicant in this matter was Gideon Gilbert Ochiel. However, the said applicant is misdescribed as the 1st interested party. He is not.
4. To appreciate this distinction we look at the genesis of this matter. This matter arose from the Land Dispute Tribunal, under the Land Dispute Tribunals Act, 1990 (No. 18 of 1990), in the office of the Land Migori District, Rongo Division.
5. Before that tribunal, the Plaintiff was Jane Akumu Migwambo and the Defendant was Gideon Ochiel. In the other words, the Claimant was Jane Akumu Migwambo and the Objector was Gedion Gilbert Ochiel.
6. It was Jane's case that her deceased husband sold Gedion Gilbert Ochiel six acres before he died. But Gedon Gilbert Ochiel was claiming that he was sold 21 acres, he accordingly fenced off 21 acres of the deceased's land. The real issues were: was it six (6) acres or twenty one acres (21) acres?
7. The tribunal found for Jane Akumu Migwambo. In the other words she succeeded in her claim at the tribunal level . The loser was, in the other words, Gedion Gilbert Ochiel. If there was one to

- appeal, it was Gedion Gilbert Ochiel, not Jane Akumu Migwambo. Gideon Gilbert Ochiel appealed in a miscellaneous application No. 120 of 2005.
8. However, in the said miscellaneous application No. 120 of 2005, dated 26th July, the confusion set in when the lawyer for the applicant Kerario marwa & Company, Advocates now described **GIDEON GILBERT OCHIEL** as the **1st INTERESTED** party and **JANE AKUMU MIGWAMBO** as the **2nd INTERSTED** party. Gideon Gilbert Ochiel was simply an applicant.
 9. On 13th April, 2011, Justice Makhandia dismissed the notice of motion filed in court on 26th July, 2005 with costs to the interested parties for want of prosecution on the part of the applicant. Now, who was the applicant here? Mr. Gideon Gilbert Ochiel was the applicant. So it was his application that was then dismissed. Who was the true interested party between Gideon Gilbert Ochiel and Jane Akumu Migwambo? It was Jane Akumu Migwambo who was the interested party.
 10. Were there two interested parties. The Rongo division Land Dispute Tribunal, was in my view, the 1st interested party. And the second interested party was therefore Jane Akumu Migwambo.
 11. Therefore, because this confusion persisted as a result of the way the parties to the pleadings were described. The applicant, Gideon Gilbert Ochiel, the applicant was variously described as both the applicant and also as the 1st interested party. This misdescription of the parties set off the confusion which, also, influenced the taxing master in taxing the bill of costs.
 12. The court finds that the costs follow the event of winning, and the event in this case was in favour of the 2nd interested party, that is, Jane Akumu Migwambo, not Gideon Gilbert Ochiel. And the Rongo Land Disputes Tribunal is, in my view, the 1st interested party as above described.
 13. Orders accordingly.

Dated and delivered at Kisii this 17th day of October, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence:-

No representation for the applicant

No representation for the 1st respondent

No representation for the 2nd respondent

No representation for the 1st interested party

Mr. Ochwangi for the 2nd interested party

Mongare Court Clerk.