



REPUBLIC OF KENYA

High Court at Eldoret

Miscellaneous Application 296 of 2003

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN KOSIRAI LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

**THE ATTORNEY GENERAL 2ND RESPONDENT
AND**

1. ANTHONY K. SAMBA

2. ELIJH K. MARITIM

3. WILSON K. BUSIENEI

4. KIMETO K. TINAI

5. JONATHAN K. KERICH

sued as

Committee Kipchunu Cattle Dip.....INTERESTED PARTY

EX PARTEJOHN K. LAGAT

JUDGEMENT

Before me is a Notice of Motion dated 25th September 2003 brought Under Order LIII Rule 1, 2, 3 and 4 of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act. The motion seeks:-

(a) Orders of Certiorari to remove into this Court with the purposes of quashing forthwith the order adopting the decision of Kosirai Land Dispute Tribunal and the Decree in Kapsabet Principal Magistrate’s Court [DT BO 10 of 2003] made on the 17th June 2003.

(b) Orders of prohibition to prohibit the Principal Magistrate Kapsabet Law Courts from executing application for consent and transfer forms in respect of Land parcel Nandi/Ngechek 902 and orders to prohibit the Secretary Kapsabet Land Control Board from consenting to application for sub-division and transfer of 0.6 acres in land parcel Nandi/Ngechek/902 and orders to prohibit the District Surveyor from carrying out any survey pursuant to the decree.

(c) Orders of mandamus to compel the District Land Registrar to delete any entries entered in the register in respect of Nandi/Ngechek/902 pursuant to the decision adopted as the Decree in Kapsabet PMC Ltd. No. 10 of 2003.

According to the pleadings, the ex-parte Applicant is the registered owner of all that parcel of land known as Nandi/Ngechek/902 (hereinafter called "suit property"). The interested parties are claiming a portion of land measuring 0.6 acres of the suit property on the basis that they purchased the same from the Applicant's late father. The Applicant, who is the registered owner, does not recognize their claim. Their claim is not registered. As a result, this dispute arose.

The dispute went before Kosirai Land Disputes Tribunal which awarded the 0.6 acres of the Applicant's land to Kipchunu Cattle Dip Committee and the same was adopted by the Kapsabet Principal Magistrate on 17th June 2003. The ex-parte applicant stated in paragraph 8 of his affidavit dated 23rd September 2003 that he was given the land through Succession process yet the Committee did not raise any objection.

It is the ex-parte applicant's case that the Tribunal did not have jurisdiction to deal with the matter. The ex-parte applicant is the registered owner of the land. The land is registered under the Registered Land Act (now repealed). In his submission, Mr. Birech counsel for the ex-parte applicant stated that the Tribunal deliberated over a matter which was the subject of sale between the Applicant's late father and the Cattle Dip Committee. He contended that land transaction ousts the jurisdiction of the Tribunal. He further argued that the Interested Parties should have sought specific performances in an appropriate forum. The elders would not have jurisdiction to arbitrate a matter regarding a dispute over a registered land. Therefore, the tribunal overstepped its powers and acted *ultra vires*. He urged the court to allow the application as prayed.

Mr. Misoi, Counsel for the Interested Parties opposed the application in its entirety. He relied on the affidavit of Mr. Wilson Busienei sworn on 26th April 2004 and the Further Replying Affidavit by Benjamin Segeron sworn on 5th May 2005.

It is his assertion that the decision of the panel of elders was properly arrived at. He asked for the dismissal of the application arguing that the Applicant should have challenged the orders adopting the award in the Provincial Land Dispute Tribunal.

Mr. Misoi reiterated that the Interested Parties and the Applicant's late father entered into a sale agreement in which the Applicant's father consented to the use of a portion of his land as Cattle Dip. The Interested Parties have been using the Cattle Dip since 1976. He further stated that the suit property was sub-divided into 2 portions and a new title created referenced Nandi/Ngechek/754 and Nandi/Ngechek/753 respectively.

He further stated that there was no proof that the members of the Tribunal had interest in the Cattle Dip and reiterated that the application if successful would deprive communities the use of the Cattle Dip. The learned counsel urged the court to dismiss the application with costs.

I have considered all the pleadings, affidavits and the submissions of the Counsel and it is my humble opinion that this matter is centered on one issue, whether the Tribunal had jurisdiction to deal with a registered land?

The Interested Parties claim is that they had entered into some sort of an agreement with the Applicant's late father. The late father is no longer there. He no longer owns the property. The current owner inherited the property as his share of his later father's estate. If indeed the interested parties had a sufficient interest in the property they had option to secure that interest during the succession process. It seems they did not. If any, their remedies do not lie with the Tribunal. I agree with the Counsel for the Applicant that they should have sought specific performance. I also agree with Mr. Birech that the proceedings of the Tribunal were not conducted in compliance with the Land Dispute Tribunal Act and therefore the Applicant was correct to approach this court. The law is clear and unambiguous on the object of the Tribunal. It does not include dealing with a registered land that touch on ownership. Clearly, it had no

jurisdiction under the law to reach the decision it made.

Accordingly, prayers (a), (b) and (c) is granted with costs to the Applicant.

Dated and signed at Nairobi on this 23RD day of AUGUST 2012.

M. K. Ibrahim
Judge

DATED AND Delivered at Eldoret on this 10THday of OCTOBER 2012.

F. AZANGALALA
Judge

In the presence of: Mr. Birech for the applicants

Ms Wanjiku for the respondents and Mr. Misoi for the Interested Party