



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO**

Misc Civil Appli 56 of 2008

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW

REPUBLIC.....APPLICANT

AND

CHAIRMAN LAND DISPUTE TRIBUNAL BURETI.....1ST PLAINTIFF

RESIDENT MAGISTRATE SOTIK.....2ND RESPONDENT

AND

SIMON K. BII.....INTERESTED PARTY

AND

RHODA CHEPTANUI BII.....EXPARTE

RULING

Judicial Review proceedings

Lands Disputes Tribunal

A. Background

1. LR Kericho/Kaptien/140 was land consisting of about 18 ½ acres registered in the name of SIMION KIBII. He sub-divided this parcel of land between his four children namely:

Roda Cheptanui Bii - 7 ½ acres

Robert Mibei - 3 acres

Willy Mibei -3 acres

Safina Mibei -3 acres

Quarry point- -2 acres

Total 18 ½ acres

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2. His daughter Roda chepanui Bii, who is also the applicant herein was accordingly shown the boundary markings between herself and the other three children. She took it upon herself to bring a surveyor who demarcated the area according to the wishes of her father. Two titles were issued being Kericho/Kaptien/155 to Rodah and Kericho/ Kaptien/156.

3. The respondent/father to the applicant then objected to the boundary between the two parcels of land and stated that he had not discussed the acreage and actually the boundary was not as he had pointed out.

4. The mother was referred to the Kimulot Land disputes tribunal and with the respondent/father Simion K. Bii and Rodah Cheptanui appeared and gave evidence. The proceedings of that tribunal are therefore relied on under **section 34** of the **Evidence Act Cap 80** Laws of Kenya.

5. The tribunal called for a surveyors report when the land was visited on 22nd August, 2007 in the presence of the area chief and parties concerned. The surveyor confirmed that by the mutation from 144-160 the same was different from the ground boundary between the parties. A map was accordingly drawn.

6. With this evidence the land disputes tribunal of Kumulot ruled that the two titles be withdrawn and the boundary made as per the surveyor and the wishes of the original land owner. The decision was arrived at on the 27th September, 2007 and filed at the Magistrate's court in Sotik. It was adopted as the judgment of that court on 6th December, 2007.

7. Being dissatisfied with this decision Rodah Cheptanui Bii filed judicial review proceedings on the 17th April, 2008 seeking orders of certiorari quashing the orders as the tribunal had exceeded its powers in making such decision. She also prayed for prohibition orders to have the titles withdrawn

II: Reply

8. The Attorney General was served but was not present during the hearing of the Judicial review proceedings where ordinarily he would represent the tribunal and the Magistrates court case.

9. The respondent appeared through his advocate much later. His arguments were basically two. The first being the application was filed out of time. The second is that the Tribunal had powers to actually entertain an application on boundary dispute.

III: Opinion

a) Limitation of actions

10. To seek judicial review proceedings under certiorari, the law requires (**order LIII r CPR**) that it must be made within six months in which the decision was made. In this case the respondent argued that the tribunal reached a decision on 27th September, 2007. The application was filed on 17th April 2008. Therefore six months had indeed expired and the matter was accordingly time barred.

11. On this argument I wish to refer this matter to the case law of

James Chumbo (applicant)

v

Chairman Sogowet land Dispute tribunal & another

Misc.Application 78/08 (JR) (Ang'awa J, Kericho)

Ruling No. 1

Where this court ruled that time begins to run in a judicial review proceedings against a lands Disputes tribunal at the stage when the decision is adopted by the magistrates courts as a judgment of the court.

12. In this case the decision began to run as of 6th December, 2007 and the application filed on 17th April, 2008. This means that the six months expires on 6th May, 2008.

13. I accordingly rule that the application is not time barred.

14. As to the second issue, in the same decision above the principles held was that the Lands Disputes Tribunal lies within the mandate of **section 3** of the Lands Disputes tribunal Act, namely, that inter-alia, the tribunal can only determine customary law disputes on trespass and customary law boundary.

15. The question arises in this case whether the tribunal may have cause to actually determine this matter ?

16. Accordingly to the applicant the respondent/father had given her, her portion of land. She brought a surveyor (through her father admitted that he was not present when the surveyor was demarcating the land). She then obtained title and therefore this title was issued to her giving her absolute proportionship that cannot be taken away from her.

17. I find herein that the registration of the title was not a first registration. The 1st registration lies with the respondent/father. He is still alive and made his wishes known to the applicant and the other children. The wish of dividing the land is and can be termed as customary as in non customary law, land is given to children or heir after one has passed away.

18. The boundary disputes effectively was adjusted and or so ordered to be done accordingly to the respondents/father's wish. The tribunal therefore did not, in effect, remove the applicant being the registered proprietor of land but only recommended that the boundary between the two parcel of land be apportioned as per the wish of the original proprietor

19. I accordingly find that the tribunal indeed acted within their mandate. I would therefore not interfere with their decision as a tribunal as the process used to come to their decision was within the law.

20. I accordingly dismiss this application with costs to the respondent S. Bii. There will be no costs to the Attorney General who has failed to attend court.

Dated this 8th July, 2009 at **Kericho**

M.A.ANG'AWA

JUDGE

Advocates

A.C. Bett advocate instructed by M/S Bett & Co. advocates for the Applicants – present

J.K. Rono advocate instructed by M/S J.K. Rono & Co. advocates for the interested party.

No appearance for Attorney General