



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT KERICHO**

**CONSTITUTION PETITION NO. 17 OF 2014**

**CHEPKWONY CHELULE.....PETITIONER**

**VERSUS**

**SENIOR RESIDENT MAGISTRATE**

**SOTIK LAW COURTS..... 1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**DAVID KIMUTAI KOECH being sued as Administrator of the estate of**

**MARY CHEMUTAI MOSONIK(Deceased).....3<sup>RD</sup> RESPONDENT**

**RULING**

***(Application to stay execution of a ruling issued pursuant to a decision of the Land Disputes Tribunal; petition arguing that the tribunal erred in proceeding against the petitioner who did not hold any letters of administration in respect of the owner of the property in dispute; application allowed)***

The suit herein is a constitutional petition filed on **10 November 2014**. It is the petitioner's case that he is the beneficial owner of the **land parcel Kericho/Kaitet/1057** which is registered in the name of his deceased mother one Cheron Maina. **On 27 November 2008**, Mary Chemutai Mosonik (now deceased) of whom the 3<sup>rd</sup> respondent holds grant of letters of administration, filed a suit that was said to be a boundary dispute before the Sotik Land Disputes Tribunal which was registered as Case No. 78 of 2007. It is the case of the petitioner that the case was a disguised suit on ownership of land and not a boundary dispute. It is further his position that he had no locus to be sued as he is not the registered proprietor of the **land parcel Kericho/Kaitet/1057**. The tribunal heard the matter and filed its award in the Senior Resident Magistrate's Court at Sotik. The award was adopted by the Court on **27 August 2009** and a decree subsequently issued. The decree was as follows :-

- i. The applicant's **land parcel Kericho/Kaitet/318** truly extends beyond the road and must remain so by practical occupation.
- ii. The District Land Surveyor and Land Registrar must put border marks to enable the applicant fence her land as per the respondents (sons of Cheron Maina) are given twelve months to rear and harvest eucalyptus trees on the Northern borderline with the access road. This to start w.e.f the court adopts the verdict.
- iii. That the surveyor with the assistance of the Area Chief to show the applicant the true boundary of **Kericho/Kaitet/318** and also remove **Plot No. Kericho/Kaitet/613** which belongs to the County Council but was wrongfully acquired by Mosonik.

The petitioner has argued that he did not hold any letters of administration for the estate of the late Cheron Maina, the owner of the **land parcel Kericho/Kaitet/1057**, and he could not be a respondent in the matter. In this petition, he wants a declaration that the judgment infringed on his constitutional rights and for the same to be quashed.

Together with the petition, the petitioner filed an application seeking to stop the execution of the order of the Magistrate's Court. It is that application which is the subject of this ruling. Despite being served, none of the respondents have responded to the application.

I have considered the application. If the matter was a boundary issue, then it is the owners of the properties who ought to have been the proper parties. There may be some substance in the case of the petitioner. It is therefore best to stay the order issued in Sotik Magistrate's Court Miscellaneous Application No. 2 of 2009 pending hearing and determination of this petition.

I therefore allow the application to that extent. Costs will be in the cause.

It is so ordered.

**Dated, Signed and delivered on this 8<sup>th</sup> day of April, 2016**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**PRESENT**

Mr. Joshua Mutai holding brief for Mr. Koske for the Petitioner/Applicant.

No Appearance for the Respondent.