



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.19 OF 2015(OS)

MARGARET KABIBI KENGA.....PLAINTIFF

=VERSUS=

NYANJE MASHA WANJE.....DEFENDANT

R U L I N G

1. In the Originating Summons dated 12th February 2015, the Applicant is seeking for leave to enlarge time within which he can file a fresh suit upon the dissolution of the Provincial Appeals Committee where Land Appeal number 310 of 2004 was pending.
2. The other issue that the Applicant is seeking to be answered by this court is whether the his Appeal should marked as withdrawn.
3. The Originating Summons is premised on the grounds that there is a pending appeal number LND/JA/310 of 2004 at the Provincial Appeal Committee between the parties herein; that the said Appellate body no longer exists and that there is a memo emanating from the Mombasa Environment and Land Court directing what should happen with all the pending appeals.
4. I have perused the memo dated 2nd December 2013 which was written by the Deputy Registrar, Environment and Land Court, Mombasa and addressed to all Magistrates and Litigants in the Coast region.
5. The Memo purports to give directions on the disposal of the pending land appeal cases that had been filed at the now disbanded “Provincial Land Appeals Tribunals”.
6. In the Memo, the Deputy Registrar directed that all the files pending before the Provincial Appeals Committee should be taken back to the relevant Magistrates' courts' that adopted the award of the Land Disputes Tribunal, and the said Magistrates to set aside the original judgments *suo moto* and the matters to be heard *de novo* by the Magistrates.
7. The learned Deputy Registrar did not quote any law that she used to give the above directive.
8. Suffice to say that the directive by the Deputy Registrar in her Memo of 2nd December 2013 is irregular and illegal.

9. I say so because having adopted the award of the Land Disputes Tribunals Act pursuant to the provisions of section 7 of the Land Disputes Tribunals Act (repealed), the magistrates' court became *functus officio*.

10. The same court cannot therefore be asked, through the directive of the Deputy Registrar to hear the matter *de novo* when the matter is actually an appeal.

11. Why would a valid Judgment be set aside *suo moto*? How would the interests of justice be served if a matter that has been heard and determined by the Land Disputes Tribunal begin *de novo* just because the Provincial Appeals Committee has been disbanded by operation of the law?

12. Considering that the Environment and Land Court Act mandates this court to hear all appeals from the subordinate courts and Tribunals, it follows that all appeals which were pending before the defunct Provincial Appeals Committee should be transferred to this court for hearing and determination. The Magistrates Courts do not have the requisite jurisdiction to hear such a matter *de novo* as suggested by the Deputy Registrar.

13. For those reasons, I dismiss the Plaintiffs' Originating Summons dated 12th February 2015 with no orders as to costs.

Dated and delivered in Malindi this 26th day of **February**, 2016.

O. A. Angote

Judge