



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC MISC APPLICATION NO. 2 OF 2015

CHARLES GATIMU MUCHIRI 1ST APPLICANT

EVANS MURIMI MUCHIRI2ND APPLICANT

VERSUS

JOSEPH MBOTE KIBUCHI1ST RESPONDENT

BENSON MBOTE KIBUCHI2ND RESPONDENT

RULING

The applicants herein have filed this Notice of Motion citing the provisions of **Order 40 Rule 1 and 4 of the Civil Procedure Rules** seeking orders that the proceedings pending before the former Provincial Land Appeals Committee vide Appeal Case No. KIRINYAGA/ 7 of 2010 be transferred to this Court for hearing and disposal. The application is supported by the affidavit of the applicants and founded on the ground that the former Appeals Committees under the **Land Disputes Tribunal Act** have been abolished and the jurisdiction to determine appeals transferred to this Court.

However, in their replying affidavit, the respondents have opposed the application and stated that their dispute which related to boundary dispute over their properties i.e. MWERUA/KAGIO/104, MUTIRA/KIAGA/835 and MWERUA/KAGIO/1626 was determined by the Land Disputes Tribunal which ordered the District Land Registrar and Surveyor to mark the boundaries and that the dispute was finally concluded at the Nyeri Provincial Appeals Committee. The matter then went to the Court at Baricho where the report of the Land Registrar and Surveyor was adopted as a Court order on 18th December, 2014.

The parties who are in person orally canvassed the application before me on 10th March, 2015. As they are lay persons, they have moved the Court under the wrong provisions of the law but this Court will not throw them away for citing the wrong provisions. **Article 159 of the Constitution** says so.

Following the enactment of the **Environment and Land Court Act** and the establishment of the **Environment and Land Court**, the **Land Disputes Tribunal Act of 1990** was repealed. Therefore, the Tribunals established under the **Land Disputes Act** ceased to exist once the **Environment and Land Courts** were established. In accordance with **Section 30 of the Environment and Land Court Act**, the Chief Justice issued several **Practice Directions** resting with the **Practice Directions** dated 28th July 2014 under **Gazette Notice No. 5178**. Under those directions, appeals that were at the **Appeals Committee** were to be transferred to this Court.

It is the applicants' case that their appeal being case No. 7 of 2010 is still pending at the Appeals

Committee Nyeri. However, the respondents claim that infact that appeal was heard and determined and thereafter, the parties were referred to the Court at Baricho where a Court order was made on 18th December 2014. In the course of the application, I asked the respondents to avail a judgment of the Appeals Committee but none was availed.

In the absence of any judgment from the Appeals Committee in Nyeri, this Court cannot conclude that the parties appeal was infact heard and determined by that Committee. The order dated 18th December 2014 from the Court at Baricho does not indicate whether what was being adopted was a judgment of the Nyeri Appeals Committee. If perhaps the said Appeals Committee did infact determine the appeal and delivered a judgment, the proceedings in that appeal would confirm the same. As of now, without the judgment of that Appeals Committee, it cannot be concluded that the appeal was heard.

In the circumstances, I do hereby grant the orders sought in the applicant's Notice of Motion dated 16th January 2015 and direct that the proceedings pending before the former Provincial Land Appeals Committee in respect of case No. KIRINYAGA 7 of 2010 be transferred to this Court. The Deputy Registrar at this Court to write to the custodian of those records accordingly and further that any other such pending appeals be forwarded to this Court for matters falling under the jurisdiction of this Court.

There shall be no order as to costs.

B.N. OLAO

JUDGE

22ND APRIL, 2015

22/4/2015

Before

B.N. Olao – Judge

Gichia – CC

Applicants – present

Respondents – present

COURT: Ruling delivered in open Court this 22nd day of April, 2015

Applicants present

Respondents present

B.N. OLAO

JUDGE

22ND APRIL, 2015