



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
MISC. APPLICATION NO. 24 OF 2015
JUDAH K. M'BIJIWE M'RUKARIA.....APPLICANT
VERSUS
ALIJAH THIRAITO..... RESPONDENT
RULING

This notice of Motion is dated 16th April, 2015 and seeks the following orders:

1. **THAT** this honourable court be pleased to transfer Nanyuki SRMCC 73/93 from Nanyuki Law Courts to the Environment and Land Court at Meru.
2. **THAT** the Court do make any other or further orders as would meet the interests of justice in this cause.
3. **THAT** the costs for and incidental to this application be provided for.

It has the following grounds:

1. **THAT** the Meru Central Lands Tribunal and the Provincial Land Appeals board have ceased to exercise jurisdiction.
2. **THAT** all the parties in this suit live within this court's jurisdiction.
3. **THAT** no prejudice will be caused if the orders sought are granted.

Mr. Kariuki told the court that in this matter the Provincial Appeals Committee had referred the matter back to the Meru Central Land Tribunal via the Provincial Commissioner's letter dated 8th August, 2007. However, the District Tribunals became defunct by operation of the law. It seems to me that the parties were rather indolent as the District Tribunals were rendered defunct many years later.

Mr. Kariuki has told the court that he seeks to have suit No. SRMCC 73 of 1993 transferred to this court. The nexus between this suit and Provincial Land Appeal Case No. 138 of 2001 has not been established. This needs to be done and the applicant must move appropriately.

In ELC suit No. 11 of 2014, Karongo Versus M'Ranyu, I gave the following directions regarding unconcluded matters emanating from Provincial Appeals Committees:

1. Section 8 of the Land Disputes Tribunals Act deals with Appeals to the Appeals Committee and to the High Court.
2. Section 8(8) states:

“The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.”

3. Section 8(9) States:

“Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of Law within sixty days from the date of the decision complained:

Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary Law) is involved.”

4. Section 8 (10) states:

“A question of Customary Law shall for all purposes under this Act be deemed to be a question of fact”

5. It is clear that this court can only take appeals from the defunct Provincial Appeals Committees on issues of law alone. Where the Provincial Appeals Committees had not concluded Appeals from District Tribunals, such matters involve both issues of fact and law.

6. Jurisdiction as stated in the case of **“The MV SS Lilian” [1989] KLR 1** is everything. I quote the Hon. Justice Nyarangi, J., as opining. “Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

7. The Supreme Court, in application No. 2 of 2011, Samuel Kamau Macharia & Another Vs Kenya Commercial Bank, at paragraph 68 eruditely and laconically stated:

“A Court's Jurisdiction follows from either the Constitution or Legislation or both. Thus, a Court of Law can only exercise Jurisdiction conferred by the Constitution or other written law. It cannot arrogate to itself Jurisdiction exceeding that which is conferred upon it by law.”

8. The ELC hears appeals from concluded appeals of Provincial Appeals Committees on issues of law only. Unconcluded appeals spawn both issues of fact and law. Furthermore, section 8 (9) of the defunct Land Disputes Tribunal Act makes it clear that appeals from Provincial Appeals Committees are against decisions of the Appeals Committee. Obviously, this provision does not countenance hearing matters in which decisions have not been made.

9. In the circumstances, I find that the ELC has no jurisdiction to hear appeals which had not been concluded by the defunct Provincial Appeals Committees. Such cases should not be referred to this court. I reiterate that this court cannot arrogate unto itself jurisdiction which has not been anchored upon constitutional or statutory provisions.

10. This court has jurisdiction to hear appeals against decisions in matters which had been concluded by the defunct Provincial Appeals Committees before they were abolished.

11. These directions should apply to all similar cases. Let the registry and all other concerned parties be guided appropriately.

The applicant seems to have conflated matters. It should be established if or not this matter comes to this court as a matter emanating from the Tribunal Proceedings or it is a matter solely reliant upon SRMCC Civil Case No. 73 of 1993 at Nanyuki.

I direct as follows:

1. ***This matter is not certified urgent.***

2. *The applicant to establish the nexus between the Tribunal Matter and SRMCC 73 of 1993.*
3. *As the applicant claims in paragraph 8 of the Supporting Affidavit that the suit land is worth over Shs.15,000,000/= a document verifying that fact should be availed.*

It is so ordered.

Delivered in Open Court at Meru this 22nd April 2015 in the presence of:

Cc. Daniel

B. G. Kariuki for the Applicant

P. M. NJOROGE

JUDGE