



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL APPEAL NO. 82 OF 2008**

**SCOLA KARUTHU MURIIRA.....APPLICANT**

**VERSUS**

**NAOMI KITHIRA M'MUNGANIA.....RESPONDENT**

**RULING**

This ruling relates to an oral application by Mr. Nahashon Karuti, Advocate, seeking to put in a fresh record of appeal in this suit. He explained that on 20.11.2014 when this suit had been slated for hearing, he had referred to a tabulated record of appeal thinking that the court record was intact. As the court file did not have the record of appeal, he submitted that it was good and proper for him to be allowed to file a replacement of the missing record of appeal. The memorandum of appeal is reproduced herebelow:

**MEMORANDUM OF APPEAL**

*(Being an Appeal from the decision of the Eastern Provincial Land Disputes Appeals Committee made in the Embu Land Disputes Provincial Tribunal Case No. 38 of 2004, and read in Court on 27.6.08 in the Meru CM's Court. LDT case No. 170 of 2004).*

*The appellant having been granted letters of administration in the Meru HC Misc. Cause No. 127 of 2008 (Copy filed herewith) to enable her to file this appeal and being dissatisfied with the decision of the above Provincial Land Disputes Appeals Committee, appeals to this Honourable Court on the grounds that:-*

- 1. The Provincial Appeals Committee erred in law in allowing the appeal then before it and in overturning the decision of the District Land Disputes Tribunal which had rightly dismissed the Respondent's case and had correctly ruled that the said District Tribunal had no jurisdiction to entertain the matter since the dispute related to title to a parcel of land registered under the provisions of the Registered Land Act Cap. 300 Laws of Kenya.*
- 2. The Provincial Appeals Committee erred in law in failing to find as the District Land Disputes Tribunal found that the matter related to a claim to title to a parcel of land registered under the provisions of the Registered Land Act Cap 300 and was therefore outside the jurisdiction of both the District Tribunal and the Provincial Committee and of the Land Disputes Tribunal Act No. 18 of 1990.*
- 3. The Provincial Appeals Committee erred in law in allowing the appeal and overturning the decision of District Tribunal without stating the grounds upon which their decision was made*
- 4. The Provincial Tribunal erred in law in allowing the appeal to itself and in overturning the decision of the District Tribunal contrary to the express provisions of the law regarding the*

*matter before it.*

On 5.6.2014, Mr. Karuti made an oral application to include the proceedings and decision of the Provincial Appeals Committee, which sat on 15.4.2008, in a supplementary record of appeal. Although this was a strange request, as the documents in question should have been the most important constituents of the record of appeal, this court allowed him to file a supplementary Record of Appeal.

I do not agree with Mr. Karuti, the appellant's advocate, that filing of a fresh record of appeal will not prejudice the respondent 7 years after this appeal was filed. Seven years is a long time and a litigant, especially in a case such as this one where the respondent is an unrepresented elderly lay lady, may find it difficult to properly respond and to ascertain the veracity of documents filed by the appellant.

Having perused the court file, I have noticed the following:

1. ***It is clear that this appeal was never admitted by a Judge as required by law.***
2. ***There was no certification by a Judge that an issue of law was involved in this appeal as required by Section 8 of the defunct Land Disputes Tribunals Act.***

Another issue, which this Court can not ignore has been brought to its attention. When Advocate Nahshon Karuti orally moved the Court to be allowed to put in a fresh record of Appeal, his status with the Law Society of Kenya was inactive. This is another way of saying that he did not possess a practising certificate. He, therefore, lacked locus standi. His oral application is, therefore, incompetent. It is dismissed.

Regarding the suit itself, having found that it has never been admitted and that it had not been certified by a Judge, as expressly required by law, that it involved a point of law, I hold that it merits dismissal in its entirety. It is, therefore, dismissed. Costs are awarded to the respondent.

It is so ordered.

**Delivered in Open Court at Meru this 18th day of May, 2015 in the presence of:**

Cc. Daniel/Lilian

Scola Karuthu Muriira - Appellant

Naomi Kithira M'Mungania -Respondent

**P. M. NJOROGE**

**JUDGE**