

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL CASE NO 25 OF 2013

(Appeal from the order 15/02/2013 in Murang'a LTD Case No 62 of 2000 - J Wekesa, SRM)

NANCY MUTHONI KIRIRO..... APPELLANT

VERSUS

RUFUS KANGETHE MANYEKI.....RESPONDENT

R U L I N G

1. The appeal herein is against an order of the lower court made on 15/02/2013 in Murang'a SRM LTD Case No 62 of 2000. By that order the lower court permitted execution of a decree issued in that case on 08/12/2000 (pursuant to a judgment entered in terms of the relevant Land Dispute Tribunal's award). The Appellant sought and obtained leave to appeal against the order.
2. The Respondent has raised a preliminary objection to the appeal on a point of law. That point of law is that this court has no jurisdiction to hear and determine the appeal in view of **Article 162(2) (b)** and **Article 165(5) (b)** of the *Constitution of Kenya, 2010* (the Constitution) and **section 13(4)** of the *Environment and Land Court Act, Cap 12A* (the Act). In the said Articles the Constitution exclusively reserved to the *Environment and Land Court* (ELC) jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and title to, land. The Constitution specifically excluded the High Court from jurisdiction in respect of matters falling within the jurisdiction of the ELC (and also the *Labour Relations Court*).
3. The Act expanded the ELC's jurisdiction to include appellate jurisdiction over decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the court.
4. The preliminary objection was canvassed by way of written submissions. The Respondent's submissions were filed on 02/02/2015 while those of the Appellant were filed on 09/04/2015. I have considered those submissions, including the one case cited by the Respondent.
5. It will be noted that the appeal herein is not a substantive appeal in respect of the merits (or lack thereof) of the decree in question. The order challenged in the appeal was made pursuant to a notice to show cause why execution of the decree should not issue.
6. Execution of decrees is provided for under **Part III** of the *Civil Procedure Act, Cap 21* and also under the extensive **Order 22** of the *Civil Procedure Rules, 2010* made under that Act. It is to be noted that by virtue of **section 19(2)** of the *Environment and Land Court Act*, the ELC is bound by the procedure laid down by the *Civil Procedure Act* aforesaid. So the ELC has the same powers as the High Court in all matters of execution of decrees in that court.
7. However, in the present case the Appellant placed before the lower court, and now before this court, the argument, in effect, that the decree in Murang'a SRM LTD Case No 62 of 2000 was merged with the proceedings in **Murang'a PM Succession Cause No 162 of 2001**. Orders made in that cause were appealed vide **Nyeri High Court P & A Appeal No 7 of 2008**. The Appellant in the present appeal has argued that by dint of the judgment in the aforesaid P & A appeal delivered on 22nd March 2010 (Makhandia, J) the decree in the LDT can no longer be executed.

8. The court dealing with the present appeal therefore must of necessity look at and possibly interpret the judgment in the P & A appeal in relation to the decree in the LDT case. As the ELC has no jurisdiction in succession matters, this court is thus best placed to deal with the present appeal. It bears to repeat that the appeal will not deal with the substantive merits of the decree in the LDT case, but only with the issue of whether or not the decree can be executed in view of the proceedings in the succession cause, including the P & A appeal).

9. In the result I will overrule the preliminary objection. This court has jurisdiction to hear and determine this appeal. Costs of this preliminary objection shall be in the appeal. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 24th DAY OF JUNE 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 26TH DAY OF JUNE 2015