



REPUBLIC OF KENYA

High Court at Kitale

Miscellaneous Application 23 of 2013

ANNAH KWAMBOKA OGARO.....APPLICANT

V

NAKURU PROVINCIAL LAND DISPUTE APPEALS COMMITTEE.....RESPONDENT

RULING

The Applicant Annah Kwamboka Ogaro brought a Notice of Motion seeking for an order that this Honourable Court be pleased to order that the Respondent do forward the appeal file registered as Peter Wekesa Fwamba Vs Annah Kwamboka Ogaro arising from Kwanza Land Disputed Tribunal Case Number 9 of 2010 between Annah Kwamboka Ogero Vs Peter Wekesa Fwamba for purposes of taking directions regarding the hearing and determinations of the appeal. The genesis of this application can be traced from a dispute arising between the Applicant and one Peter Wekesa Fwamba regarding ownership of Plot Kwanza No. 35 Namanjalala Trading Centre. The Applicant took the dispute before Land Disputes Tribunal for Arbitration under the provisions of the Land Disputes Tribunal Act (now repealed). The dispute was resolved in favour of the Applicant but the Defendant in the said dispute Peter Wekesa Fwamba preferred an appeal against the Tribunal's decision to the Nakuru Provincial Land Disputes Appeals Committee. The appeal was registered as Appeal No. 55 of 2010. The Appellant Peter Wekesa Fwamba applied for stay of execution of the decree. He was granted stay pending hearing and determination of the appeal. The property in disputed had a semi permanent structure. The stay meant that the appellant was at liberty to continue staying in the premises on the suit property.

While the appeal was pending hearing, the Land Disputes Tribunal Act of 1990 was repealed following the establishment of the Environment and Land Court. The effect of the repeal of the Land Disputes Tribunal Act of 1990 was that all matters pending before Tribunals established under the Act were to be sent back to the Subordinate Courts for hearing and disposal. The Chief Justice vide Gazette Notice No. 16268 issued practice directions to the effect that all proceedings which were pending before the Magistrate's Court, having been transferred thereto from the defunct District Land Disputes Tribunal were to be heard and determined before the same Courts.

The Applicant contends that she has been to Nakuru on several occasions seeking to know the status of the appeal but she has not been getting any co-operation from the officials of the concerned office. It is on this basis that she prays that the Court do order the Respondent to forward the file to this Court for directions and eventual hearing and determination of the same.

Once the Land Disputes Tribunal Act of 1990 was repealed, the Tribunals established under the Act were supposed to administratively forward all pending proceedings before them to the respective Subordinate Courts within their jurisdictions. Once the proceedings are before the Subordinate Courts, it was then the duty of the Subordinate Courts to give directions on the best way to dispose off the matters. This is why the Chief Justice issued the practice directions contained in Gazette Notice No. 16268 of 09/11/2012 in

anticipation that all the proceedings of the defunct tribunals would have been returned to the respective Subordinate Courts. It is not difficult for the defunct tribunals to send the files pending before them to the Subordinate Courts. Any appeal to the Provincial Land Disputes Appeals Committee must have passed through a particular Subordinate Court where the Land Disputes Tribunal verdict was adopted as judgment pursuant to Section 7(2) of the Land Disputes Tribunal Act. It will therefore not be a big task for the officials in those offices to sort out the pending files and forward them to the respective Courts.

The Applicant herein has a genuine application. She may not be the only one suffering because of the files not being forwarded to the Subordinate Courts. I allow her application and direct that if this particular file has not been forwarded to Kitale Chief Magistrate's Courts the same should be forwarded to the said Court as soon as practicable. To avoid a situation where similar applications will be filed, I direct that a copy of this ruling be served upon the successors of the Provincial Commissioner Rift Valley Province Nakuru for necessary action.

It is so ordered.

Dated, signed and delivered in Open Court on this 30th day of April, 2013.

E. OBAGA

JUDGE

COURT

Ruling delivered at 10.22 am in the absence of parties. Parties can read the ruling at the registry.

Court Clerk: Joan.

E. OBAGA

JUDGE

30/04/2013