



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**LAND AND ENVIRONMENT COURT**  
**CIVIL CASE NO.206 OF 1995**

MATEO GITHUA NGURUKIE.....PLAINTIFF

**VERSUS**

SOLOMON MWANIKI WAMBOO.....1ST DEFENDANT

JOYCE WANJIRU MWAURA .....2ND DEFENDANT

**RULING**

The application herein is brought under the provision of Articles 60 1(b) and 162 (2) (b) of the Constitution. Article 60 1(b) provides for the principle of security of land rights in Kenya. In other words the courts have a duty to protect each individuals land rights.

Article 162 (b) 2 establishes the Environment and Land Court whilst Section 13 (1) (2) confers to this court jurisdiction original and appellate to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution. Generally, section 13 of the Act confers jurisdiction to this court to hear and determine disputes relating to Land and Environment.

The applicant is praying for an order that this court sets aside or reviews the ruling dated 19th/11/2010 striking out the application dated 12/10/2001 and that the applicant plaintiff be allowed to prosecute his case. Moreover that previous orders on costs be reviewed and that the cost of this application be in the cause.

The grounds of the application are that the plaintiff applicant filed the Notice of Motion dated 12/10/2001 seeking to set aside the award in the Provincial Lands Disputes Appeals Committee Case No.60 of 1998 and the order delivered on 27/9/2001. He also sought an order that the court proceeds with the matter on a point of law. The applicant developed health problems and lost touch with reality. As a result of which the application was not heard for a long period of time. The application was heard by Justice J.K. Serگون on the 4/10/2010. He declined to grant the applicant more time to engage a lawyer to represent him because he had previously been given two weeks to do the same but showed no efforts of doing so.

The ruling was delivered in open court on the 19th of November 2010 in the presence of Mr. Macharia holding brief for Mahan for respondent and Mr. Ombongi for the applicant.

The learned Judge found that the application was misplaced hence improperly before the court as the court could only hear an appeal filed under Section 8(9) of the Land Disputes Tribunal Act No.18 of 1990. The motion could not by any stretch of imagination be regarded as an appeal.

The application is brought under order 51, 45 (1) b, 46 (16) (a) (3) of the Civil Procedure Rules 2010 and Section 3A of the Civil Procedure Act.

The power to review a decree or an order of the court is to be applied where any person considering himself aggrieved by the decree or the order from which an appeal is allowed and no appeal has been preferred or where to said person is aggrieved by an order where no appeal is allowed.

The Notice of Motion dated and filed on the 12/10/2001 was filed under Section 8(8) of the Land Disputes Tribunals Act No.18 of 1990. That Section does not provide for the filing of an application to set aside or review a decision of the Appeals Committee but provides for the filing of an appeal in the High Court on points of Law. This court finds that the application dated 12/10/2001 was strange in law and therefore the principle as whether an appeal lies or does not lie is not applicable and therefore not subject to review.

The court further finds that the applicant has failed to demonstrate that th has discovered a new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made. The applicant has not demonstrated that there is a mistake, or error apparent on the face of record or any other sufficient reason for the court to exercise its discretion to review the decision of Justice J.K. Sergon.

The decision of Justice J.K. Sergon was on a point of law and therefore the only course of action left to the applicant is to appeal to the Court of Appeal on the issues of law.

Lastly, the plaintiff has not demonstrated that the Judge made an error of law in interpreting Section 8 (8) of the Land Disputes Tribunal Act No.18 of 1990.

This matter is muddled with a lot of confusion in procedure beginning with the order of Hon. Justice Osiemo on the 24/1/97 when he ordered that the same be referred to elders for arbitration. The order by Justice Osiemo appears to have changed the course of this matter. The matter was referred to the Tribunal and a decision by the Tribunal was made on the 27/5/1998 and awarded the land in question to the plaintiff Mr. Mateo Githua Ngurukie and found that the defendants Solomon Mwangi Wambo and Joyce Wanjiru Mwaura never conducted proper transaction.

On appeal to the Nyeri Provincial Appeals Committee by the defendants on grounds that the panel of elders had no jurisdiction to hear the arbitration as a matter of law interalia, the appeals committee found for the appellants that the right owner of Othaya/Kihugiru/424 was Patrick Mwaura, the defendant herein and ordered the plaintiff to be evicted.

The plaintiff filed the Notice of Motion dated 12/10/2001 challenging the decision of the Appeals Committee. The whole process in this matter is tainted by procedural irregularities and nullities which can only be salvaged by reviewing the order of Justice Osiemo to allow the court make an informed decision on the basis of the plaint and defence and the evidence to be adduced by the parties as a Judge's decision when it is made out of the subject matter jurisdiction is forever a nullity in the eyes of the law by operation of the law. However, the plaintiff applicant has not moved the court properly for the procedural impropriety and nullities to be addressed. Reviewing the decision of Justice Sergon will not salvage the procedural muddles in this matter in any event the decision of Justice Sergon was on a point of law with which I agree. The application is hereby dismissed with costs.

***Dated, signed and delivered at Nyeri this 15th day of July 2013.***

**A. OMBWAYO**

**JUDGE**

