

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL APPEAL NO.8 OF 2013

EDWARD NJANE NGANGA)

SAMUEL MWANGI NGANGA).....APPELLANTS

VERSUS

DAMARIS WANJIKU KAMAU.....RESPONDENT

RULING

The application dated 17th June 2013 is made under Order 42 rules 27 (a) and rule 28 and is not opposed. Order 42 rule 27 (a) is not relevant as there is no evidence that the court appealed from refused to admit the evidence sought to be adduced.

Order 42 rule 27 (1) (b) is relevant only if the applicant proves that the documents sought to be produced are required by the court to pronounce judgment or any substantial cause.

I have looked at the application and convinced that the documents are relevant in the determination of the appeal however, the applicant has to prove to this court that the documents were not available and could not be obtained without undue hardship.

The applicant has demonstrated to the court that he attempted to obtain the minutes of the Land Board meeting of 19/04/2011 but could not obtain the same and that the letter of Dr. Mary W. Kuria was rejected by court and therefore his crucial evidence was not considered by the court.

The upshot of this is that the application is merited and not opposed and the same is granted in terms of prayers b. Orders accordingly.

Dated, signed and delivered on 19th day of September 2013.

A. OMBWAYO

JUDGE