



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**

**Miscellaneous Application 153 of 2000**

**GIDEON MWANGI CHEGE.....APPLICANT**

**VERSUS**

**TABITHA WANJA CHEGE )**

**CHRISTOPHER N. CHEGE)**

**SIMON NDUNG’U CHEGE ).....RESPONDENTS**

**RULING**

In the Amended Notice of Motion dated 12<sup>th</sup> January 2004, Gideon Mwangi Chege, hereinafter referred to as the “Applicant” sought for the following orders:

- 1. *That the Honourable Court be pleased to review the ruling dated 19<sup>th</sup> June 2001 dismissing the appeal on the grounds that it raised no point of law.***
- 2. *That costs of this application be provided for.***

The applicant swore an affidavit he filed in support of the Motion. Tabitha Wanja Chege, James Wokabi Chege, Christopher Nderitu Chege and Simon Ndungu Chege, being the 1<sup>st</sup> – 4<sup>th</sup> Respondents respectively filed the replying affidavit of Christopher Nderitu Chege to oppose the Motion.

It is the submission of the applicant that the order made on 19.06.2001 which rejected his appeal against the decision of the Land Disputes Tribunal on the ground that it raised no points of law should be reviewed and set aside. He claimed that his appeal raised serious points of law which escaped the attention of the court at the time of making the order. He beseeched this court to grant him the orders. Mr. Karweru, learned advocate for the respondents urged this court to dismiss the motion on the ground that the same does not meet the requirements of an application for review. He invited this court to look into the matter and find that the applicant has in various courts lost court cases and application over the same dispute, hence he should not be allowed to re-open litigation.

There is no dispute that the applicant’s appeal against the decision of the provincial appeals committee was dismissed by Justice (rtd) J.V.O. Juma on 19<sup>th</sup> June 2001 on the basis that the same raises no points of law. Annexed to the replying affidavit of Christopher Nderitu Chege, is a ruling delivered by Justice (rtd) Mitey on 14<sup>th</sup> November 2001. The learned Judge formed the opinion that the Applicant herein, attempted to circumvent the order dismissing his appeal.

The history behind this Motion appear to be short and straightforward. The Respondents appear to have filed a complaint before the Mweriga land Disputes Tribunals each claiming to be entitled to a portion of the parcels of land known as:

**L.R. No. Nyeri/Watuka/1102**

**L.R. No. Nyeri/Watuka/1103 and**

**L.R. No. Nyeri/Watuka/1104.**

The Land Disputes Tribunal agreed with the Respondents. The applicant was unhappy hence he filed an appeal against the Mweiga Land Disputes Tribunal's decision before the Central Province Land Disputes Appeals Committee vide Tribunal case No. Nyeri/133/2000. The Central Provincial Appeals heard and determined the appeal on 26<sup>th</sup> July 2000 as follows:

**Gideon Mwangi Chege – 7.5 acres**

**James Wokabi Chege – 5.0 acres**

**Tabitha Wanja Chege – 1.0 acre**

**Christopher Nderitu Chege – 3.0 acres**

**Simon Ndungu Chege – 3.0 acres**

The Applicant was not satisfied with the Appeals committee's decision he filed this appeal in which he put forward the following grounds of appeal:

- 1. That the said appeals Tribunal erred in law in filing to allow the appellant to adduce of his evidence and to call all his witnesses.***
- 2. That the Appeals Tribunal erred in law in failing to allow the appellant to cross-examine all the respondents.***
- 3. The appeals Tribunal erred in Law in failing to allow one of the respondents who was alleged owner of the land to give her evidence.***
- 4. The Appeals Tribunal erred in law purporting to give land to the respondents, whereas the land is registered in the sole name of the appellant.***
- 5. The appeals tribunal erred in law in taking into account extraneous matters and from the blues making an award, without any legal basis.***
- 6. The Appeals Tribunal erred in law in taking into account the evidence of the respondents without getting the evidence of the Settlement Funds Trustee who was present but was refused to testify.***
- 7. The said Tribunal failed to observe rule of natural justice and was biased against the appellant.***

Under section 8 (9) of the Land Disputes Tribunals Act, the court was enjoined to certify that since appeals raised serious points of law. The record shows that the applicant filed the motion dated 14<sup>th</sup> August 2000 in which he sought the court's discretion to certify his appeal as having raised serious points of law. The application was supported by affidavit. The Respondents opposed the motion by filing the replying affidavit sworn by James Wokabi Chege. Justice (rtd) Juma stated in his brief ruling of 14/6/2001 that he perused the proceedings of Provincial Land Disputes Appeal Committee and the Memorandum of Appeal and found that the appeal does not raise any points of law hence the learned judge proceeded to reject the appeal. It is the contention of the applicant that the judge did not look at his

intended points of law presented to court. In the amended motion dated 12<sup>th</sup> January 2004, the applicant heavily relied on the ground that he has discovered a new matter to enable this court to review the order dismissing his appeal. He has pointed out that given a chance he will show that the tribunal had no jurisdiction to entertain a dispute in respect of title to land. The Respondents are of the view that there is no new matter to enable this court review the order. After a serious reflection of the matter, the question to be answered is whether the motion meets the requirements of an application for review. Under order XLIV rule 1 of the old Civil Procedure Rules (now order 45 rule 1), a party aggrieved by an order or decree may apply for the review of the order or decree on any of the following grounds:

(i) ***The discovery of 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 order made. Or***

(ii) ***On account of some mistake or error apparent on the face of the record or***

(iii) ***for any other sufficient reason.***

It is not clear from the record whether the parties appeared before the learned judge for the interpartes hearing of the motion dated 14<sup>th</sup> August 2000. In the aforesaid motion the applicant had beseeched the court to find his appeal to raise points of law. In my humble view it is clear from the record that the learned judge did not hear the parties over the motion. It would appear the learned judge simply looked at the proceedings of the Provincial Land Disputes Appeal's Committee and the Memorandum of Appeal. I am convinced by the Applicant's submission that there is a discovery of a new matter which he could not produce at the time of making the order. Had the learned judge given the parties a hearing most probably, the applicant and or his counsel could have pointed out that the land disputes tribunal handled a matter it had no jurisdiction to hear and determine. The learned judge did not mention whether he considered the draft points of law filed in court contemporaneously with the motion dated 14<sup>th</sup> August 2000.

I must confess that there is a very thin line in this matter as to whether the applicant should have appealed or file an application for review. In my considered opinion, I am convinced that the most appropriate remedy in the matter is that for review. There is clear evidence from the record that the attention of the learned judge was not drawn to the existence of the motion and the draft points of law. That is a new matter which is vital. I have already referred to the decision of justice (rtd) Mitey which indicated that the Applicant intended to circumvent the fact that his appeal had been rejected. In my estimation I do not think the aforesaid finding will impact negatively the amended motion. I will exercise my discretion to give the applicant an opportunity to pursue his appeal by allowing the amended motion. Consequently, the order rejecting the applicant's appeal made on 16<sup>th</sup> June 2000 is set aside. The appeal is restored. Parties are at liberty to fix the motion dated 14<sup>th</sup> August 2000 for interpartes hearing on priority basis. Each costs of the amended motion to abide the outcome of the Motion dated 14<sup>th</sup> August 2012.

**Dated and delivered this 17<sup>th</sup> day of August 2012.**

**J.K. SERGON  
JUDGE**