



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

NAIROBI

CIVIL APPEAL NO. 325 OF 2009

(Being an appeal from the Award of the Provincial Land Disputes Tribunal at Nyeri, delivered on 28th May 2009

in Claim No. Kiambu West 2/2009)

NYOIKE NG'ANG'A.....APPELLANT
MURENGE NG'ANG'A.....APPELLANT

VERSUS

GATURU NGA'NG'A.....RESPONDENT

RULING NO. 1

(Application dated 6 January 2011 for orders to dismiss appeal for want of prosecution)

I. Background

1. Not being satisfied with the decision of the Provincial Land Disputes Appeals Tribunal, the appellant herein appealed to this High Court on 28 May 2009.
2. From 28 May 2009 to 21 September 2010, the court took no action in this matter; except on 26 July 2010, the records of appeals from Nyeri High Court was called for. Another notice was issued on the said 21 September 2010 requesting the appellant to file record of appeal.
3. No action was taken and as a result the respondent/appellant files this application dated 6 January

2011 to seek for orders that the appeal be dismissed for want of prosecution.

4. The provision of the Law relied on being Section 3A of the civil Procedure Act and all other enabling provisions of the Law.

II. APPLICATION

5. Should this appeal be dismissed?

6. The appeal was filed in 2009 before the rules under the Civil Procedure rules were amended. I therefore require to make my decision under the former rules and not the current Rules.

7. Section 3A of the Civil Procedure Rules is not appropriate in this matter.

8. The court procedure is for the Deputy Registrar to issue a notice to both parties, after the file has been placed before the Hon. Judge for admission, and where admission of the appeal to court has been made and directions taken, then, within 3 months the appellant is to set down the matter for hearing.

9. Where only the memorandum of appeal has been served, then, for 1 year, no action to have the appeal heard is made, then, an application by the respondent may be made to have the appeal dismissed.

10. I would find that the court position is that the appeal is to first be admitted. Where it is only the Memorandum of Appeal that has been filed and served, then an application after one year applying for the dismissal of the appeal may be made.

11. The difference of the Civil 2010 rules to the former rules appears to be that the role of the Deputy Registrar is limited.

12. The application herein is hereby rejected as not being in compliance with the rules.

13. There will be no orders as to costs as the respondent was absent.

RULING DATED THIS 11TH DAY OF MAY 2011 AT NAIROBI

M. ANG'AWA

JUDGE

Advocates

i. *L. M. Njogu instructed by Nyoro Njogu & Co. Advocates for the Respondent-present*

ii. *S. Morara Omariba instructed by G. Morara Omariba & Co. Advocates for the*

Applicant- present

