



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

HIGH COURT CIVIL APPEAL NO. 17 OF 2005

BEATRICE GICUKU:.....:APPELLANT

VERSUS

JAPHET NGURU:.....:RESPONDENT

JUDGMENT

According to the Amended memorandum of Appeal dated 22.6.2006, this appeal arises from

***“The Report dated
30.9.04 filed by the
District Surveyor
on 4.10.21004, and the Report dated 16.9.2004 filed
by the District Land Registrar, Embu on 20.9.2001
following the orders of the learned SRM,
R. M Mochache on 22.4.2004 and 16.9.2004 in
Embu PM’s Award case No. 53 of 2002”***

The Appellant has listed 3 grounds of Appeal which I need not repeat for purposes of this short judgment. The Appeal proceeded by way of written submissions which I have read and carefully considered. I must say from the outset that I am in full agreement with the brief submission (1/2 page) of counsel for the Respondent. He has in his short submission just restated and clarified the position in law relating to Appeals. There is no competent Appeal before me on which I can be called upon to make a determination on merit.

As rightly submitted by counsel for the Respondent, an Appeal can only be against a “Decree” of “Order” of the court. It cannot lie against a report filed in court or any other document unless such a report or proceeding is first reduced to a decree or order of the court. It is such a decree or order that is then certified and filed with the Memorandum of Appeal pursuant to order 42(4) of the Civil Procedure rules (as amended)

There cannot be an Appeal to this court against a surveyor’s or Land Registrar’s report. The fact that the magistrate directed that any party who was dissatisfied with the said reports can move to the High Court on appeal against the said reports was a misdirection. The magistrate cannot confer jurisdiction to this court or to his court where none exists in law.

That directive was made in total ignorance of the law. As said earlier, this Appeal is totally incompetent

and I must dismiss the same which I hereby do. The Appeal is therefore dismissed with costs to the Respondent.

W. KARANJA
JUDGE

Signed by the above but dated and delivered at Embu this 28th day of July 2011

JUDGE