



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

CIVIL APPEAL NO 60 OF 2006

MUNYI KIBUANA.....1ST APPELLANT
GILBERT NJERU.....2ND APPELLANT
PATRICK NTHIA MATI.....3RD APPELLANT
NAMU MUKUNGU.....4TH APPELLANT

VERSUS

HENRY MUGO NJERU.....RESPONDENT

(An Appeal from the decision of the Eastern Provincial Land Disputes Appeals Committee in Appeal Case No.92 of 2003)

RULING

This is the Notice of Motion dated 27/4/2010. It's for Orders that the Consent Order made on 30/9/2008 be reviewed and or be set aside. And that the Mbeere District Land Registrar deletes the name of Njeru Njagi entered on the suit land EVURORE/NGUTHI/2232 on 19/11/2009 pursuant to the Consent.

The main ground is that the Applicant never gave his lawyer instructions to enter into the Consent. That his former advocate never revealed to him anything about the Consent. He only learnt of it after getting a certificate of search on the land.

The 2nd Appellant/Respondent put in a replying affidavit. He insists that the Applicant consulted with his lawyer before the entry of the Consent.

Prima facie, any Order made in the presence and with the Consent of Counsel is binding on all parties to the proceedings or action and on those claiming under them.

The Consent Order complained of was made by this court on 30/9/2008 in the presence of Mr. Mwaniki for the Appellants and Mr. Mogusu for the Respondent. By consent the Appeal dated 15/8/2006 was allowed and the file closed with each party paying its own costs. The Applicant/Respondent now says he never instructed his lawyer to do so. In the case of ***GICHUKI –VS- MUNJUA & 2 OTHERS [2004] 2 KLR 112*** it was held that only conditions the non-performance of which could give rise to the setting aside of a Consent Judgment would be conditions coming into force of the Consent and not the terms of

the Consent itself.

The Applicant says that as he never gave instructions to his former Counsel and as a result of the Consent he has lost 30 acres of land. The record shows that Mr. Mogusu had been acting for the Applicant/Respondent since 2006. There is no reason given why Mr. Mogusu would act contrary to the instructions given by his client. A look at the Appeal shows that the Appeals Committee had acted ultra vires its jurisdiction in awarding title to land. Its now settled law that Land Tribunals & Appeals Committees have no jurisdiction to deal with issues of Title under Section 3(1) of the Land Disputes Tribunal Act No.18/90. See ***CATHOLIC DIOCESE OF MURANG'A REGISTERED TRUSTEES 2003 KLR 389.***

The Applicant has not raised any substantiated condition precedent to the presentation of this Consent to the court. Counsel acted on the Applicants' instruction. The Applicants avenues are not closed. He can still file a substantive suit for a claim of land unless he is time barred by statute.

I find no merit in the Notice Motion which I hereby dismiss with costs.

DATED, SIGNED AND DELIVERED AT EMBU THIS 14TH DAY OF DECEMBER 2011.

**H.I. ONG'UDI
JUDGE**