



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERICHO**  
**CIVIL APPEAL 20 OF 2008**

**WALTER KIPCHIRCHIR KOECH .....APPELLANT**

**VERSUS**

**GRACE CHEROP KORIR ..... RESPONDENT**

**RULING**

**Preliminary Objection**

**I: Background**

1. The appellant original Plaintiff filed suit in the magistrate court at Kericho being PMCC.NO. 225/04. This suit concerned land. On the issue of encroachment of land between the two parties namely the appellant and the respondent. Land parcel Kericho/Kipsonoi S.S. 350 and Kericho/Kipsonoi S.S 351 respectively.
2. The appellant alleged a total of 0.7 acres had been encroached. The defendant/respondent claimed there was another court case that already dealt with this matter being RMCC. 6/71 at SOTIK.
3. Nonetheless the Plaintiff gave evidence and closed his case before the trial magistrate. The matter was adjourned. Before the said Defendant/respondent could be heard in his defence the party agreed by consent to refer the case for determination before the Lands Disputes Tribunal on the 5.12.04. An award was read on 24<sup>th</sup> January, 2007 and was made an award of the court.
4. The Plaintiff/appellant changed advocates. The advocates then filed an application for review on grounds that the advocate for the appellant had not been authorized to refer the matter to arbitration. The appellant sought to set the award aside.
5. The trial magistrate – a new one who took over from the original magistrate, declined to set the award aside nor allowed the a review to set the consent entered into aside.
6. The appellant appealed to the High Court.
7. On the day this matter came up for hearing of the appeal, the respondent advocate raised a preliminary objection.

### **III: Preliminary Objection**

8. The objection before the court is that the matter before the subordinate Court dealt with the Land Disputes Tribunal. It means that the said appeal cannot lie to the High Court. Only the Provincial Lands Tribunal can hear this appeal.

9. In reply the appellant stated that the appeal is not from the Lands Disputes Award of the tribunal but on the refusal of the trial magistrate to review the orders of review applied for.

### **VI: Findings**

10. It is correct to say that there is no right of appeal from the Lands Disputes Tribunal cases. Appeals lies with the Provincial lands Tribunal.

11. In this appeal, the lower court shows that the appellant had returned to the trial magistrate seeking a review. The magistrate declined to grant orders of review.

12. Review are brought under Order XLVI V r 1 cpr. Where it is declined under rule 3, the rules state that a right of appeal lies to the High Court under Order XLII r 1(1) (aa) cpr. This even if the court has no jurisdiction to hear a matter a review application automatically gives the court a right to hear a refusal or that review to the High Court.

13. To this extent I hereby overrule the objection and dismiss the same with costs to the Applicant/respondent.

**DATED** this 14<sup>th</sup> day of May, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

### **Advocates**

C.O. Orayo advocate instructed by M/s. Meroka & Co. Advocates for the Appellant originally Defendant-present

G.K. Mutai Advocate instructed by M/s. Chelule & Co. advocates for the Respondent originally Plaintiff-present.