

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 749 of 2002

NANCY WAMBUI NGUGIAPPELLANT

1. ELIAS KAMANDE NDURURI

2. VERONICA NJANJA NDURURIRESPONDENTS

R U L I N G

Contrary to papers lately filed in this appeal and what the court has been led to believe the last few times this matter has come up, there is only one appellant in this appeal. The original appellant was NANCY WAMBUI NGUGI. By an order entered on 6th July, 2007 (Osiero, J), one JOSEPH MACHARIA WAITHAKA was substituted in her place following her death.

The appeal is against the order of the Principal Magistrate at Thika dated 12th November, 2002 in **D.O. Civil Case No. 57 of 2000**. By that order the lower court refused the Appellant's application to set aside an order for execution against her of the judgment of the court entered in terms of an award made by a land disputes tribunal under the Land Disputes Tribunals Act, No. 18 of 1990. The Appellant seeks in the appeal the main order, in effect, to set aside the aforesaid judgment and in its place confirm another judgement allegedly already entered.

The Substituted Appellant, who is acting in person, has now applied by notice of motion dated 9th July, 2007 seeking the main order to review

“both the proceedings and judgment of the District Lands Tribunal at Thika and that of the Provincial Lands Appeals Tribunal at Nyeri and give orders for the immediate transfer of Land Registration LOC 1/MUGUMOINI/902 and MABANDA T. 13A ...”.

The application is said to be brought under sections 3A and 7 of the Land Disputes Tribunal Act, No. 18 of 1990, sections 3A, 7, 25 and 80 of the Civil Procedure Act and Orders 20, 44 and 21 of the Civil Procedure Rules. The application is opposed by the 1st Respondent. The 2nd Respondent did not file any papers in response.

I have considered the submissions of the Substituted Appellant and those of the 1st Respondent's learned counsel. The Substituted Appellant is seeking orders which, if allowed, would have the effect of disposing of the appeal at this interlocutory stage. That cannot be permitted. The application is entirely misconceived and incompetent. It is hereby struck out with costs to the 1st Respondent. Let the Substituted Appellant prosecute his appeal in the usual way. Orders accordingly.

DATED AT NAIROBI THIS 11TH DAY OF DECEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 14TH DAY OF DECEMBER, 2007