

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Civil Appeal 102 of 2002

EVANS MATINDI MUURU APPELLANT
VERSUS
MARGARET GACHIKU & 15 OTHERS RESPONDENTS

(Appeal from the Award of the Provincial Land Disputes Appeal Committee Central Province in Appeal No. Kiambu 111/99)

R U L I N G

By a notice of motion brought under section 3A of the Civil Procedure Act and Order XLI rule 28 of the Civil Procedure Rules, the Respondents in this appeal seek to have the memorandum of appeal filed herein struck out on the ground that it is bad in law as it does not contain all the names of the parties involved in the appeal, and that it does not contain a certified copy of the order or decree appealed from, and finally, that it is not numbered in red as required.

I have considered the proceedings of the Tribunal which are subject of this appeal. I do concur with the appellant that the Respondent in those proceedings were described as Margaret Gachiku and others. The failure to adequately name or describe the Respondent can therefore only be taken up as a substantive ground of appeal. It could only have been dealt with as a preliminary issue in the proceedings in the Tribunal.

With regard to the failure to include a certified copy of the order or decree appealed from I concur with the appellant's advocate that the proceedings in the land Disputes Tribunal and the Provincial land Dispute Appeals Committee operate under special jurisdiction as provided under the Land Disputes Tribunal Act. In the circumstances a certified copy of the proceedings and ruling of the Land Disputes Tribunal and the Provincial Land Disputes Appeals Committee having been provided that is adequate for the purposes of the record of appeal.

While it is true that the record of appeal has not been properly indented, that is an issue that can be dealt with at direction stage before the appeal is certified as fit to proceed to hearing.

I find therefore that there is no sufficient cause for striking out the Memorandum of appeal. The application dated 29th March 2005 is accordingly dismissed with costs.

Dated signed and delivered this 23rd day of November 2005.

H. M. OKWENGU

JUDGE