



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**MISCELLANEOUS APPLICATION NO. 27 OF 2016**

**MENZA KASENA..... APPLICANT**

**-VERSUS-**

**NGALA KATSOLE.....RESPONDENT**

**RULING**

*(Application for transfer of an appeal that was pending before the Provincial Land Disputes Appeals Committee; appeal still pending when the Land Disputes Tribunal Act was repealed; Practice Directions issued and providing that appeals be heard by the Environment and Land Court Act; application allowed subject to the record of appeal being filed within 30 days)*

1. Before me is a miscellaneous application dated 1 September 2016 and filed on 2 September 2016. That application was amended on 9 November 2016. Annexed to the amended notice of motion is an “amended supporting affidavit” which is completely misplaced for you cannot amend an affidavit, it being a deposition. You can only file a supplementary affidavit, or as is commonly said in this jurisdiction, a “further affidavit.” Be that as it may, the amended application seeks the transfer of Mombasa Provincial Land Disputes Appeals Committee Appeal No. 118 of 2000 to this court for hearing. The appeal was against the decision of the Land Disputes Tribunal at Kaloleni being Case No. 28 of 2000. The dispute at the Tribunal was over the land registered as Kaloleni/Chalani/202 registered in the name of one Katsole Mumba who I understand is father of the respondent. The applicant filed the suit before the Tribunal claiming either full or part-ownership of this land. The Tribunal heard the dispute and rendered its award sometimes in the year 2000. The Tribunal dismissed the case of the applicant. The award was filed at Kaloleni Magistrate’s Court and judgment entered in terms of the award on 12 September 2000. Aggrieved, the applicant filed the appeal before the Provincial Land Disputes Appeals Committee. It is apparent that by the time the Land Disputes Tribunal Act was repealed in 2011 by the Environment and Land Court Act, the appeal had not been finalized. It will be noted that in this application, the applicant wishes to have the said appeal transferred to this court for determination.

2. There is a replying affidavit filed opposing the application. Mainly, the respondent avers that the applicant did nothing to move the matter while at the Appeals Committee. The respondent has also filed an application dated 5 May 2021 seeking orders to have this application dismissed for want of prosecution; a declaration that the suit land belongs to the defendant’s late father; and an order restraining the applicant from utilizing the land.

3. I have considered all the above. I do not wish to be drawn into any other issue other than whether or not to have the pending appeal at the Appeals Committee transferred to this court. I will be going beyond the parameters of this application if I am to entertain other matters such as those being raised by the respondent.

4. In an instance such as this, what applies is the Practice Directions on Proceedings in the Environment and Land Court, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in Other Courts, dated 25 July 2014 (Gazette Notice No. 5178). Paragraph 13 thereof provides that appeals emanating from Magistrate’s Courts and Tribunals shall be heard by the Environment and Land Court, which is this court.

5. Although the respondent complains that the applicant took no steps to have the appeal heard, I cannot tell why the matter took that long before the Appeals Committee. What is important is that it was still pending and had not been dismissed when the Appeals Tribunal was rendered defunct. I do not wish to take away the right of appeal of the applicant.

6. I therefore allow this application. The appeal from the decision of the Land Disputes Tribunal that was pending before the Provincial Land Disputes Appeals Committee is hereby transferred to this court. I do not find it necessary to call for the file that was at the Appeals Committee. I think it is more prudent if I direct the applicant to file a record of appeal within the next 30 days. If he fails to file and serve the record of appeal as directed above, I will have little choice but to order the appeal to be struck out, for we do not have the luxury of time for an appeal that was filed 20 years ago. Any party wishing to have any further orders can file an application after the record of appeal has been filed.

7. The costs of this application will be costs in the appeal.

8. Orders accordingly.

**DATED AND DELIVERED THIS 19TH DAY OF OCTOBER 2021.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT OF KENYA**

AT MOMBASA