



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL NO. 223 OF 2007

HANNAH WAIRIMU MWANGI

Alias HANNAH WANGARI MWANGIRESPONDENT/APPELLANT

VERSUS

PAUL KARIUKI KIMANI.....APPLICANT/RESPONDENT

JUDGMENT

1. The Applicant, **Paul Kariuki Kimani**, filed an application by way of Notice of Motion dated 21st July 2008 seeking the following orders:

a) That the Memorandum of Appeal dated 6th December 2007 and filed in court on 6th December 2007 be struck out for being fatally defective, incompetent and an abuse of the process of this Honorable Court.

b) That the costs of this application be paid by the Appellant/ Respondent.

2. The application was premised on the following grounds:-

a) An appeal against the decision of a District Land Tribunal lies with the appeals Committee for the Province in which the land which is the subject matter of the dispute is situated

b) The Appellant/ Respondent has come to the High Court prematurely as the award has not been confirmed by the lower court.

3. A brief affidavit in support of the Application sworn by the Applicant on 24th July, 2008 was annexed to the application. He deposed that he was the complainant in the South Kinangop Land Tribunal Case No. 66 of 2007 and the Appellant herein was the Respondent; That the tribunal delivered its decision on 27th September, 2007 and the Applicant sought to have the said decision adopted in Nyahururu Principal Magistrate's Court Case No. 38 of 2007; However the matter was stood over generally after the Appellant informed the court that she had filed an appeal. The deponent on advice of his advocate avers that the appeal is incompetent as the appeal from District tribunal does not lie directly to the High Court but the Provincial Land Tribunal. He therefore seeks this court to strike out the Appellant's appeal for being incompetent and not properly before it.

4. The application is uncontested despite service of the same to the Appellant/ Respondent herein.

5. The matter came up for hearing before this court on 10th March 2014. There was no appearance

by the Appellant. On the other hand **Mr. Kanyi**, the learned counsel held brief for **Mr. Waithaka Mwangi** for the Applicant. The submissions by counsel were merely a rehash of the grounds on the face of the application and the supporting affidavit.

ISSUES FOR DETERMINATION

6. Upon hearing the submissions of Counsel for the Applicant in the absence of the Respondent, who had been duly served, the court finds the following issues for determination which are;
 - a. Whether the appeal against the decision of the Land Disputes Tribunal is premature and therefore incompetent.
 - b. Whether to strike out the appeal,

ANALYSIS

7. The appellant being aggrieved with the decision of the Land Disputes Tribunal, South Kinangop filed this instant appeal in the High Court. This Court notes from the court record that the award of the Land Disputes Tribunal is dated the 27th day of September, 2007 and thereafter the appeal HCCA 223of 2007 was filed on the 6th of December, 2007. At Section 8 (a) of the repealed Land Disputes Tribunal Act Chapter 303 the section specifically provides that appeals by either party against the decision of the Land District Tribunal shall lie to the area Land Disputes Appeals Committee and thereafter to the High Court.
8. The appeal to the Provincial Appeals Committee must be filed within thirty (30) days and the appeal to the High Court can only relate to a point of law and must be filed within a window period of sixty (60) days from the date of the decision of the appeals committee.
9. The Judge of the High Court must first certify that the appeal lodged is only on a point of law. Thereafter upon such certification the appeal shall then be admitted.
10. The court observes that the Appellant ought to have first filed an appeal against the Tribunal's award at the area Land Appeals Committee. It is noted that there is no decision that exists from the area Land Appeals Committee therefore the appeal lodged in the High Court has no legal basis as it is premature. This court reiterates the provisions of **Section 8(a)** of the Act, which Act was still in existence and had not been repealed, that section is specific and states that appeals from the Tribunal lie with the Land Appeals Committee and thereafter to the High Court.
11. This court is guided by the decision in the case of **The Speaker of the National Assembly V. The Hon. James Njenga Karume**, Civil Application No. 192 of 1992(unreported) where the Court of Appeal held;

‘.....where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or and an Act of Parliament that procedure should be strictly followed.....’

12. A provision existed under **Section 8(a)** of the **Land Disputes Tribunal Act** which the appellant ought to have adhered to. No provision of any written law exists to circumvent the procedure prescribed by the aforesaid section that allows the appellant to lodge an appeal directly in the High Court.

FINDINGS

13. For the reasons set out above this court finds that the appeal filed herein is premature and the appeal is found to be incompetent as this court has no jurisdiction to entertain such an appeal.
14. The appeal warrants being struck out.

CONCLUSION

15. The application is found to have merit and is hereby allowed.
16. The Appeal is hereby struck out with costs to the Applicant.

Dated, Signed and Delivered at Nakuru this 12th day of May, 2014.

A. MSHILA

JUDGE