



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NYERI**

Civil Appeal 191 of 1996

EPHANTUS NYAGA MBOGOAPPELLANT

AND

JOHNSON NYAGA MBOGO RESPONDENT

**(Appeal from the judgment of the High Court of Kenya at Meru
(Justice Etyang) dated 10th May, 1996**

IN

H. C. C. C. NO. 15 OF 1993)

ORDER OF THE COURT

By his motion Johnson Nyaga Mbogo has moved the Court for an Order under rule 80 of the Court of Appeal Rules that this appeal should be struck out as no appeal lies in the circumstances of this appeal.

On 4th November, 1991 the applicant sued the respondent for a declaration (inter alia) that held land parcel Ngandori/Kirigiti/T. 272 in trust for the applicant.

As it was a land matter, the Principal Magistrate Embu referred the dispute to a panel of elders section 9 of the Magistrates Courts Act. By their letter dated 27th April, 1992, the elders forwarded their award to the learned magistrate. They found that the land in question belonged to the applicant.

The court file mysteriously disappeared and a skeleton file was opened.

On 9th September, 1992 the learned magistrate read the award. Then the respondent applied to the court to set aside the award on the ground that the panel did not consider the evidence which was given by him and his witnesses. The applicant objected to the award being set aside. The learned magistrate by his ruling dated 15th January, 1993 dismissed the respondent's application and refused to set aside the award and entered judgment in terms of the award.

The respondent then appealed to the Superior Court at Meru in Civil Appeal No. 15 of 1993. By his judgment dated 10th May, 1996 Etyang, J. dismissed the appeal with costs.

The respondent has now appealed to this Court and the applicant objects that there is no rights of appeal and as such the appeal should be struck out with costs.

Section 9 E (2) of the Magistrate's Court Act (Cap 10) reads:-

“(2) Upon judgment having entered a decree shall follow and no appeal shall lie from that decree except in so far as the decree is in excess of, or not in accordance with, the decision of elders.”

The respondent has not appealed to this court on the ground that the decree is not in accordance with the decision of elders.

As judgment was entered in terms of the award of the elders on 15th January, 1993, no appeal can lie thereafter against the decree in pursuance of the judgment. The present appeal therefore does not lie and has been incompetently brought. It is hereby struck out with costs. The applicant will also have the costs of the notice of motion.

Dated and delivered at Nyeri this 14th day of May, 1997.

R. O. KWACH

.....

JUDGE OF APPEAL

G. S. PALL

.....

JUDGE OF APPEAL

S. E. O. BOSIRE

.....

AG. JUDGE OF APPEAL