

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC ELC NO. 10 OF 2017

GEORGE KIOGORA APPLICANT

VERSUS

M'MUGAMBI M'RINGERA & 5 OTHERS RESPONDENT

RULING

1. In the application dated 30.7.2018, the respondents in his miscellaneous application have sought orders for the setting aside of the orders given a 23.5.2018. The grounds in support of the application are that the dispute is concluded.

2. One of the respondents, M'Mugambi M'Ringera has sworn a supporting affidavit filed on 30.7.2018 where he states that he was the successful claimant in the LDT No. 52 of 2009 and the applicant tried to lodge an appeal with the provincial appeals committee which he declined to attend to and was never heard until the same became defunct. He further avers that this matter was marked as closed on 17.7.2018 upon the request of the Applicant's counsel. He also states that the applicant in this suit will not be prejudiced since he also entitled to one acre of land out of the subject matter as per the award of the District Land disputes Tribunal, of which the deponent herein is ready to give him. He therefore urges the court to allow his application in the interest of justice.

3. The application is opposed by George Kiogora, the applicant in the miscellaneous suit vide his replying affidavit filed on 29.8.2010 where he avers that his appeal before the Provincial Land Appeals Committee Eastern Province was never heard because the Committee was disbanded. He also avers that at no time was the LDT NO.52 of 2009 concluded.

4. The only issue to determine is whether this dispute is concluded. I have perused the record herein and I find that this miscellaneous suit was filed in order to determine the fate of the matter which was before the Eastern Province Land Disputes Appeals Committee of which the court gave a determination vide the ruling of 23.5.2018. The court directed that the appeal be heard before this court. That does not mean that the appeal proceedings were to be heard in this miscellaneous suit. As far as this matter is concerned, there is no evidence that the dispute is concluded. The appeal is yet to be heard. I believe that what is concluded is the determination of the application dated 10.4. 2017, hence the closure of this file on 17.7.2018.

5. The present application is dismissed with no orders as to costs, but the court will give directions on the hearing of the appeal.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 8TH DAY OF MAY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muchiri for applicant

C.P Mbaabu holding brief for Gikunda for respondent

HON. LUCY. N. MBUGUA

ELC JUDGE