



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 163 OF 2010

WANJIRU WAIRAGU WANJOHI.....APPELLANT/RESPONDENT

VERSUS

**MIRIAM NAISUAGU KANUNU (*Suing on behalf of the Estate of*
KANUNU OLE KAURRAI – deceased).....RESPONDENT/APPLICANT**

RULING

1. In the Application dated 19th August, 2016, the Respondent/Applicant is seeking for these reliefs:
 - a. That this Honourable Court be pleased to set aside or review the order made by Justice Kariuki on the 13th February, 2015 as there was an error apparent on the face of the record.***
 - b. Costs of this Application be in the cause.***
2. The Application is premised on the grounds that the Respondent died on 11th May, 2014 long before the appeal was determined; that the Judge erred in determining the appeal in the absence of one of the parties or a legal representative of his Estate and that the Judgment should be reviewed.
3. In response, the Appellant/Respondent's advocate deponed that the Applicant was represented by the firm of Mulwa Isika and Mutia Advocates; that directions for the hearing of the appeal were given on 8th October, 2013 and that the advocates filed their respective submissions on 9th December, 2013 thus concluding the appeal.
4. It is the Appellant's advocate case that the Respondent in the appeal was represented throughout the appeal.
5. The Applicant's counsel submitted that by the time the appeal was heard and determined, the Respondent in the Appeal had already died; that the court was oblivious of the said death and that the Estate of the deceased has been subjected to suffer.
6. Counsel submitted that the case before the Judge was for encroachment and not ownership of the land and that the Land Disputes Tribunal had jurisdiction to handle the matter.
7. The Appellant/Respondent's advocate submitted that it is not true that the Appeal proceeded in the absence of the Respondent.
8. I have perused the Certificate of Death annexed on the Applicant's Affidavit. According to the said

Certificate of Death, one Zakies Swakei Kaurrai aged 36 years died on 11th February, 2011 at Makindu Hospital.

9. The name of the claimant in the Land Disputes Tribunal and the Provincial Land Appeals Committee is one Kanunu Kaurrai and not Zakies Swakei Kaurrai.

10. Indeed, in the proceedings before the Provincial Land Disputes Appeals Committee, the Appellant herein informed the Committee that her husband bought 6 acres in 1965 from one Kanunu Kaurrai. The Respondent, Kanunu Ole Kaurrai, informed the Committee that he only sold to the Appellant's husband 4 acres.

11. Now, if the deceased was only 36 years old as at the time of his death in the year 2011, it cannot be said that he is the one who sold to the Appellant's husband land in the year 1965.

12. In the absence of evidence to show that the person who died on 11th February, 2011 and going by the name of Zakies Swakei Kaurrai is indeed the Respondent in the Appeal, I find the Application to be unmeritorious.

13. I therefore strike out the Application dated 19th August, 2016 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF JANUARY, 2018.

O.A. ANGOTE

JUDGE