



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
THIKA LAW COURTS
ELC.MISC APP NO.48 OF 2017
IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO.18 OF 1990(REPEALED)
AND
IN THE MATTER OF APPEAL CASE NO.2 OF 2011 PENDING BEFORE THE DEFUNCT
PROVINCIAL APPEALS COMMITTEE, CENTRAL
DAVID KARIUKI NDIRANGU.....APPLICANT
-VERSUS-
GLADYS NYAMBURA NDIRANGU.....1ST RESPONDENT
NDIRANGU MAINA.....2ND RESPONDENT
WAMBUI NDIRANGU.....3RD RESPONDENT

RULING

This is a *Miscellaneous Application* brought by the Applicant herein *David Kariuki Ndirangu*, under Sections 1, 1A, 3 and 3A of the Civil Procedure Act and has sought for the following orders:-

- a. That an order do issue for the removal of Appeal Case No.Ruiru 2/2011, pending before the defunct Provincial Appeals Committee, Central, to this court for hearing and disposal.
- b. That costs be provided for.

The application is supported by the grounds stated on the face of the application and on the *Supporting Affidavit* of the Applicant. These grounds are:-

1. The said Appeal is still pending whereas the Appeals Committee in which it was filed has since been abolished.
2. The law now requires the Appeals to be moved to this court for hearing and disposal.

In his *Supporting Affidavit*, *David Kariuki Ndirangu* averred that the matter herein was subject of proceedings before the defunct *Land Disputes Tribunal* at *Ruiru* vide *RUR/LTD/09/2010*, as is evident from the copy of the proceedings and award therefrom marked as annexure D1. Further that the award

was duly filed at the *Thika Chief Magistrate's Court vide Thika D.O Case No.34 of 2011*, as per *annexture D2*. He also alleged that he filed *Appeal Case No.Ruiru 2/2011*, as per the *Notice* marked *D3*. However he has now been advised by his advocate that the Appeals Committee which was handling such Appeals has since been abolished and the law under which it was operating has been repealed. He urged the Court to move the pending Appeal to this court for determination and hence this application.

The application is opposed and *Gladys Nyambura Ndirangu*, one of the Respondents herein swore a Replying Affidavit on her behalf and on behalf of the other Respondents. She averred that the award of *Ruiru Land Disputes Tribunal*, was adopted by the *Magistrate's Court vide Thika D.O Case No.34 of 2011*. She also averred that she is a stranger to the alleged Appeal in this case as she has never been served with any Appeal papers. Further that she has been advised that an aggrieved party was supposed to file an Appeal to the Provincial Appeals Committee within thirty days of the decision which the Applicant herein did not do. It was her allegation that no *Notice* was ever served on herself and her Co-Respondents and therefore this application is untenable. She also alleged that *annexture D3*, has no dates and it might just be an intentional way of concealing to court that no Appeal has been filed. Therefore the court should not allow the instant application as no Appeal has been lodged or filed. She urged the Court to disallow the instant application.

The application was canvassed by way of written submissions, which this Court has carefully read and considered. The parties reiterated the contents of their pleadings in the submissions.

The Applicant submitted that upon enactment of *Environment and Land Court Act No.19 of 2011*, the *Land Disputes Tribunal Act No.18 of 1990*, was abolished and the *Environment and Land Court*, was given exclusive jurisdiction to deal with all matters being handled by the said Tribunal. The Chief Justice gave Practice Directions vide *Gazette Notice No.1617 of 19th February 2010* which stated as follows:-

“All proceedings which were pending before the Provincial Land Appeals Committee as at the date of the enactment of the Environment and Land Court Act 2011, shall be moved to the nearest High Court for hearing and determination”.

It was his submission that the moving of the said Appeals was supposed to be an administrative process and since that was not done, the Applicant thus filed the instant application.

The Respondent on her part submitted that there is no Appeal before the Defunct Provincial Appeals Committee, Central and therefore there is no Appeal which can be transferred to this Court. The Respondent relied on Section 8 of the Land Disputes Tribunal Act (now repealed) which provides:-

- 1. Any party to a dispute under Section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.**
- 2. The Appeal shall be registered in a register of Appeals in the same manner as the register of claims under Section 3(3), and a notice thereof shall be served on the other party or parties to the dispute in the same manner as provided in Subsection (4) of Section 3(3). The Appeal shall be in documentary form and shall contain a brief statement, to be divided into separate grounds of Appeal, of the reasons upon which the party appealing wishes to rely.**

To the Respondent, what was attached to the affidavit sworn by the Applicant was not an Appeal as contemplated under Section 8(2) of the Land Disputes Tribunal Act. That the said Appeal is not registered and was not filed 30 days after the decision of the Tribunal. The Respondent urged the Court to dismiss the instant application.

The Court has considered the available evidence. It is indeed correct that on *14th June 2011*, the *Ruiru Land Disputes Tribunal* in *RUR/LDT/09/2010*, in a matter involving the Applicant herein *David Kariuki Ndirangu* against *Gladys Nyambura Ndirangu, Ndirangu Maina* and *Wambui Ndirangu* gave its verdict on *14th June 2011*. The said Award was read to the parties on *25th July 2011* at the *Thika*

Chief Magistrate's Court vide D.O. Case No.34 of 2011. From the Court record, it is clear that the matter was to be mentioned on **29th August 2011**, for confirmation and further orders. The Applicant did not attach the court records of **29th August 2011**, but the Respondents have alleged that the said award was confirmed and adopted by the court. If that is the case, the said award is now a Judgement of the court capable of enforcement. There is also no evidence as to whether the said order of the court was stayed or not.

However, the Applicant has attached a document dated **8th August 2011**, which is indicated as an Appeal against Ruling and Judgement of **RUR/LDT/09/2010** and **Thika Chief Magistrate's Court, D.O. Case No.34 of 2011**. The said document is allegedly addressed to Chairman, **Nyeri Provincial Land Disputes Committee**. However, no evidence that this document was ever received at the said Provincial Appeals Tribunal as it does not bear any receipt stamp. Though the Applicant attached **D3** being a notification from the **Provincial Commissioner, Nyeri**, indicating that the Appellant had appealed against the decision of **Land Disputes Tribunal**, the name of the parties are missing. The case number is also missing and the land reference number not given. It is not clear whether the said notification referred to the instant **Land Disputes Award** or a different one. Further, it has not been very clear why the Applicant took close to six years after the repeal of **Land Disputes Tribunal Act 1990** and enactment of the **Practice Directions** by the Chief Justice, to bring this application.

This Court will concur with the Respondents that there is no evidence of any existing Appeal capable of being transferred to this court for further hearing and determination. There was inordinate delay on the part of the Applicant in filing the instant application and the Court will rely on the maxim of equity which states that **'Equity aids the vigilant but not the indolent'**. There were laches on the part of the Applicant and this Court being guided by the provisions of Sections 1A and 3A of the Civil Procedure Act finds that the necessary order herein is to disallow the instant application. Further, Section 1A of the said Act behoves the court to determine matters before it expeditiously and proportionately.

The Court finds and holds that for the sake of expeditious disposal of civil disputes before the court, the order that should commend herein is the one of disallowing the instant application as it is not clear whether there is a pending Appeal or not. Also not clear whether Applicant did file an Appeal before the **Provincial Appeals Tribunal** in **Nyeri**.

For the above reasons, the Court finds that the Applicant's **Notice of Motion** dated **10th July 2017** is not merited. The said application is consequently dismissed with costs to the Respondents.

It is so ordered.

Dated, Signed and Delivered at Thika this 2nd day of March 2018.

L. GACHERU

JUDGE

In the presence of

Mr. Mwihia holding brief for M/S Waithera Mwangi for Applicant

1st Respondent in person present

2nd Respondent in person present

3rd Respondent in person present

Lucy - Court clerk.

L. GACHERU

JUDGE

Court – Ruling read in open court in the presence of Mr. Mwihi holding brief for M/S Waithera Mwangi for the Applicant and presence of all the Respondents.

L. GACHERU

JUDGE

2/3/2018