



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CIVIL APPEAL CASE NO 40 OF 2017

FORMERLY MERU ELC CIVIL APPEAL CASE NO. 143 OF 2013

DAVID MUTUA MACENGE.....APPELLANT

VERSUS

REGINA KAMENGE.....RESPONDENT

RULING

1. This is a case which was brought to this court ostensibly as an appeal.
2. Upon perusing of the pleadings it is pellucid that the Embu Provincial Appeals Committee never finalized this case.
3. Parties were invited to come to court for directions today.
4. Section 8 subsections 9, 8 and 10 of the defunct Land Disputes Tribunals Act decree as follows:
 - 8(8) The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.
 - 8(9) Either party to the Appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:

Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that court has certified that an issue of law (other than customary law) is involved.
 - 8(10) A question of customary law shall for all purposes under this Act deemed to be a question fact.
5. It is clear beyond peradventure that appeals come to this court only against decisions of Appeals Committees. When no decision had been made by the Provincial Appeals Committees, no appeal can be properly filed in this court. In simple explanation: This court lacks jurisdiction.
6. I need not reinvent the wheel. The issue of jurisdiction should be tackled the minute the court becomes aware of its existence. In the celebrated case of “The MV SS Lilian S”, Justice Nyarangi opined as follows:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the

material before it. Jurisdiction is everything. Without it, a court has no powers to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

7. The Supreme Court in the case of Samuel Kamau & Another versus Kenya Commercial Bank and Two Others – Sup. Ct. Civil Application No. 2 of 2011 opined as follows:

“A court’s jurisdiction follows from either the Constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the 1st and 2nd respondents in his submissions that the issue as to whether a court of law had jurisdiction to entertain a matter before it, is not one of procedural technicality; it goes to the very heart of the matter for without jurisdiction, the court cannot entertain any proceedings”.

8. This position was eruditely re-stated by the Supreme Court in Petition No. 5 of 2015 (Between the Republic as Appellant and Karisa Chengo and two others as Respondents). The court quoted Lord Denning in Benjamin Leonard Mcfoy United African Company Limited (UK) [1962] AC 152 in the privy council as opining:

“If an act is void, then it is in law a nullity. It is not only bad ...and every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse”.

9. A decision was not made by the Embu Provincial Appeals Committee. There is no appeal properly filed in this court. Entertaining such a matter would be putting something on nothing. Something put on nothing will produce nothing.

10. In the circumstances, this court finds that there is no appeal properly before this court.

11. This file should be removed from the list of appeals pending in this court. Perhaps in the future, if the legislature provides another avenue to be appealed to, this matter may end up there.

12. It is declared that this matter has been disposed of by this court.

13. It is so ordered.

Delivered in open court at Chuka this 19th **day of October, 2017**

in the presence of:

CA: Ndegwa

Appellant absent

Respondent absent

P.M. NJOROGE

JUDGE