



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 226 OF 2017

FORMERLY NAKURU HCA NO. 199 OF 2011

DAMARIS WANGECI KARIUKI.....PLAINTIFF

-VERSUS-

BARNABA MARITIM1ST DEFENDANT

PHILIP YEGEN.....2ND DEFENDANT

TAPUNE ARAP KALYA.....3RD DEFENDANT

RULING

The Appellant herein had filed a Civil Appeal in the High Court of Kenya at Nakuru challenging the decision of the District Land Disputes Tribunal at Mulot and registered at the Narok Senior Principal Magistrate's Court.

The Respondents herein filed in a Preliminary Objection on points of law on inter alia that this court lacks the requisite jurisdiction to hear and determine an Appeal from the defunct District Land Disputes Tribunal.

When the parties appeared before me on the 13th June, 2017 they agreed to dispose off the said Preliminary objection by way of written submissions. On the 26th July, 2017 Miss Njoroge for the Respondents informed the court that she did not file submissions on behalf of the Respondents as the Appellant was yet to serve her with the Submissions on considering the Memorandum of Appeal in this matter it is my opinion that the remedy they are seeking could best be addressed in Application by way of Judicial Review than an Appeal this position was also considered in the case of **Emily Jepkemei Ngeyoni & Ano -Versus- Nicholas Kipchumba Kogo & Ano. (2006) eKLR** where Dulu J observed that:-

“The District Land Dispute Tribunal cannot be challenged by way of a suit to the High court but through an Appeal to the Provincial Land Disputes Tribunal and by way of a Judicial Review Application.”

The Tribunal at among its decision was exercising a quasi-judicial function and it is imperative to note that the known remedy to challenge the decision the preliminary objection the court at the time did give directions that parties to file their submissions. The Appellants filed their submissions but the Respondents did not.

I have had the opportunity to read the Memorandum of Appeal and the submissions.

The main contention is whether the court has jurisdiction to hear the Appeal. The Appeal herein is from the Mulot District Land Tribunal. The decision of the Tribunal as was then provided was to challenge the decision at the Provincial Land Disputes Tribunal which was the law in operation at the time.

The other avenue to challenge the decision of the tribunal was by way of Adjudication Review Application since the tribunal was a quasi-judicial organ of a quasi-judicial body is through a Judicial Review Application and not by way of Appeal.

In view of the above, I do sustain the Preliminary Objection that was raised by the Respondents and I dismiss the appeal.

Each party to bear its own costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 6th day of October, 2017.

Mohammed Noor Kullow

Judge

In the presence of:-

Ms Nchoe holding brief for Kiplenge &Kurgat

N/A for the defendant

CA:Chuma