



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE

MISC.APPL. 43 OF 2015

CHRISTOPHER WAFULA MUTORO.....APPLICANT

VERSUS

RICHARD LODIA LOKERE.....RESPONDENT

R U L I N G

1. This is a ruling in respect of a Notice of Motion dated **21/4/2016** brought under the provisions of **Order 45 Rule 1 of the Civil Procedure Rules 2010**. This application arises out of the court's order given on **14/10/2015** in which this court directed that **Appeal No. 26 of 2011** between **Christopher Wafula Mtuoro** and **Richard Lodia Lokere** lying at the defunct Nakuru Provincial Appeals Committee be brought from there and be heard by the Chief Magistrate's Court.
2. The applicant Christopher Wafula Mutoro contends that the file was brought from Nakuru and that he has been unable to have it filed before the Chief Magistrate's Court because the same is an appeal which cannot be heard before the Chief Magistrate's Court. That the only court with jurisdiction to entertain the appeal is this court. He further contends that there is an error which is apparent on the record which should be reviewed with the result that the file from Nakuru Provincial Appeals Committee is placed before the Environment and Land Court for hearing and disposal.
3. In arguing the application, the applicant's counsel contended that since the verdict of the Kwanza Land Disputes Tribunal was adopted by the Chief Magistrate's Court, they cannot again entertain the appeal.
4. The applicant's application is opposed by the respondent through replying affidavit sworn on **13/5/2016** and filed in court on the same day. The respondent contends that the applicant's application is frivolous and is an abuse of the process of court which is only meant to delay the finalization of **Kitale Chief Magistrate Land Case No. 9 of 2011**.
5. I have carefully considered the applicant's application as well as the opposition thereto by the respondent. **Order 45 Rule 1 of the Civil Procedure Rules** provides grounds under which an aggrieved party can move a court for review. In the instant case, the applicant argues that there is an error apparent on the face of the record. The applicant has not pointed out that error which is apparent on the record. The ruling which is the subject of the review was very clear. The proceedings which were pending before the defunct Nakuru Provincial Land Disputes Tribunal Appeals Committee was to be forwarded to the Chief Magistrate's Court for hearing and disposal. In arriving at the said decision, this court was alive to the provisions of **Section 30 of the Environment and Land Court Act of 2011** and **Gazette Notice No. 5178 of 28/7/2014** and this was clearly explained in the ruling. **Gazette Notice No. 5178 of 28/7/2014** was issued pursuant to

Section 30 of the Environment and Land Court Act of 2011. The said Notice is valid and stands to date. It has never been a subject of any litigation. It is not even a subject of the stay of coming into force of certain amendments which were made to the Magistrates Court Act and the Environment and Land Court Act.

6. The applicant's argument that it is the Chief Magistrate's Court which adopted the verdict of the Tribunal award as Judgment of the court and hence cannot hear the appeal is without basis. The Land Disputes Tribunal Act [now repealed] was very clear on how an aggrieved party could proceed from an award of the Tribunal. He could either file an appeal to the Provincial Appeals Committee or file an appeal to the High Court on a point of law only. In the present case, the applicant chose to prefer an appeal to the Provincial Appeals Committee. The role of magistrates under the repealed Act was clearly set out. Theirs was to adopt. They had no power to alter or deal with the award in any way or entertain applications for stay. They were however free to assist in execution of the awards and this was not on the basis of the repealed Act but from other statutes like the Civil Procedure Rules relating to execution of decrees. It therefore follows that there is nothing wrong in the Chief Magistrate's Court in hearing the appeals from the Provincial Appeals Committee. The court has been given that power through Gazette Notice which Gazette Notice is premised on the Environment and Land Court Act and the powers by the Chief Justice as stated therein.
7. This application was brought on the basis of review. I have stated herein that there is no error apparent on the face of the record. If the applicant has any other grounds for making the application, those cannot be grounds for review. I therefore find that the applicant's application lacks merit. The same is hereby dismissed with costs to the respondent. The stay orders which had been given in this file are hereby vacated.

It is so ordered.

Dated, signed and delivered at Kitale on this 27th day of June, 2016.

E. OBAGA

JUDGE

In the presence of M/s Munialo for Applicant and Respondent in person.

Court Assistant – Isabellah.

E. OBAGA

JUDGE

27/6/2016