



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC APPEAL NO. 10'B' OF 2015**

**CHARLES GATIMU MUCHIRI.....1<sup>ST</sup> APPELLANT/RESPONDENT**

**EVAN MURIMI MUCHIRI.....2<sup>ND</sup> APPELLANT/RESPONDENT**

**VERSUS**

**JOSEPH MBOTE KIBUCHI.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**BENSON MBOTE KIBUCHI.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**RULING**

On 29th January 2015, this Court delivered a judgment in which it dismissed the appellants' appeal against the judgment of the **NDIA EAST LAND DISPUTES TRIBUNAL** delivered on 3rd September 2010 as adopted by the Resident Magistrate's Court at Baricho.

The appellants have now filed a Notice of Appeal dated 1st February 2016 declaring their intention to appeal against that judgment.

The respondents have re-acted by filing a Notice of Motion citing the provisions of **Section 3A of the Civil Procedure Act** and other enabling provisions of the law seeking the following orders:-

- 1. That the Notice of Appeal dated 1st February 2016 be struck off.***
- 2. That the appellants, their servants and/or agents, families, relatives or any other person working under them be permanently restrained not to utilize the disputed portion of land parcel No. MWERUA/KAGIO/104 to end the dispute once and for all.***
- 3. That the costs of this application be provide for.***

That application which is the subject of this ruling is premised on the grounds set out therein and supported by the affidavit of **JOSEPH MBOTE KIBUCHI** and **BENSON MBOTE KIBUCHI**.

In opposing the application, counsel for the respondents filed grounds of opposition in which it is stated that this Court has no jurisdiction to grant the orders sought and the application is therefore in-competent and a non-starter.

The applicants relied on their application and supporting affidavit while the respondents relied on their grounds of objection.

I have considered the application and the grounds of objection thereto.

The appellants desire to appeal against this Court's judgment dated 29th January 2016. By dint of the provisions of **Rule 75 of the Court of Appeal Rules**, any person who desires to appeal to the Court of Appeal from the decision of the High Court is required to give notice by lodging such a notice in writing with the Registrar of the High Court within 14 days of the date of the decision against which it is desired to appeal. The appellant filed their notice of appeal on 2nd February 2016 with the Registrar of this Court following the said judgment. That was a procedural requirement demanded by the law and there is no basis upon which this Court can strike it out as sought in the application subject of this ruling. In any case, the jurisdiction to strike out such a notice lies with the Court of Appeal and not this Court. **Rule 84 of the Court of Appeal Rules** provides as follows:-

***“A person affected by an appeal may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken within the prescribed time”.***

It is clear therefore that even if there was a valid ground upon which the appellant's Notice of Appeal can be struck out, the jurisdiction to do so lies elsewhere and not in this Court. That application must therefore be dismissed.

With regard to the second limb of the same application, it appears to be seeking some “***permanent***” orders restraining the appellants from utilizing a portion of the parcel No. MWERUA/KAGIO/104 in order “***to end the dispute once and for all***”. It is not clear how this Court can grant the applicants “***permanent***” orders in the manner sought. Besides, the applicants are not the parties that intend to appeal against this

Court's judgment dated 29th January 2016. It is not clear whether what is being sought is in the nature of an interlocutory relief in line with the principles set out in the case of **GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358**. I think the fact that the applicants are acting in person has occasioned the muddle in which they find themselves.

The up-shot of all the above is that the Notice of Motion dated 4th April 2015 is dismissed with costs.

**B.N. OLAO**

**JUDGE**

**30<sup>TH</sup> SEPTEMBER, 2016**

Ruling dated, signed and delivered in open Court this 30<sup>th</sup> day of September 2016.

Applicants both present in person

Respondents both present in person.

**B.N. OLAO**

**JUDGE**

**30<sup>TH</sup> SEPTEMBER, 2016**