



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**LAND AND ENVIRONMENT COURT**

**MISC.APPL. NO.128 OF 2012**

EDWARD MAINA KARIUKI & ANOTHER.....APPLICANTS

**VERSUS**

WAIRIMU NDEI..... RESPONDENT

**R U L I N G**

The Notice of Motion dated 27/8/2012 seeks an order of this Court to specifically rectify the order issued by the Chief Magistrate's Court in Chief Magistrates Award No.38 of 2008 in Nyeri on 30/3/2011 to read that the land parcel No. **Nyeri/Endarasha/73** be subdivided into two equal portions of 4.85 Hectares each instead of to be shared among the children and the title deeds be issued by the parties respectively.

The application is based on grounds that the matter has been finalized and has gone through legal stages to a point of subdividing the parcel of land **No.Nyeri/Endarasha/73** into two equal portion of 4.85 Ha. each instead of being shared among the children.

The Land Control Board has approved the subdivision of the said land into two equal portions. what is remaining is the District Surveyor to have the court order issued by the Chief Magistrate's Court on 30/3/2011 being specifically rectified to read that the said land be subdivided into two portions of 4.8 Ha. each and that he is unable to subdivide the said land using the said order.

The complaint by the applicants is that the decision of the Land Disputes Tribunal was unfair. The 2nd Applicant is the mother of the 1st Applicant.

The application is opposed by the respondent on grounds that the application seeks to amend the order adopted by the court and the applicants should have filed an appeal to the Appeals Committee and thereafter to High Court.

I have considered the evidence on record and the submissions by parties and do find that on the 12/8/2008 the Kieni West Division Land Disputes Tribunal made a decision that the land registrar Nyeri was to revoke all the title deeds from the original **Nyeri/Endarasha/73**. The said land was to be shared equally amongst the children of Ndei their late father and that the court was to sign the documents.

On the 3rd March 2008, the Chief Magistrate Court in Nyeri Award Cause No.38 of 2008 adopted the award and issued an order on the 30th March 2011. The applicant now seeks to rectify the order to read that the property be subdivided into two equal portions.

I do find the application misconceived as this court has no power to rectify a decree or order of the Chief Magistrate's Court under the provision of the Land Disputes Tribunal Act No.18 of 1990.

The Court can only entertain an appeal from the Appeals Committee. This is not an appeal from the Appeals Committee envisaged under the Act. This court observes the order of the Chief Magistrate cannot be rectified without the quashing of the decision of the Kieni West Land Disputes Tribunal.

The application is ultimately dismissed with no order as to costs as the same is based on a family

dispute.

*Dated, signed and delivered at Nyeri this 25th day of September 2013.*

**A. OMBWAYO**

**JUDGE**