



Case Number:	Misc Appl Case 153 of 2000
Date Delivered:	11 Dec 2014
Case Class:	Civil
Court:	Environment and Land Court at Nyeri
Case Action:	Ruling
Judge:	Antony Ombwayo
Citation:	Gideon Mwangi Chege v Tabitha Wanja Chege & 2 others [2014] eKLR
Advocates:	Mr Karweru for the Defendant
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	Nyeri
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application dismissed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT

MISC APPL. CASE NO. 153 OF 2000

GIDEON MWANGI CHEGE..... PLAINTIFF

VS

TABITHA WANJA CHEGE & 2 OTHERSDEFENDANT

RULING

The application is dated 14/8/2000 wherein the applicant/Appellant seeks an order that the court do certify that an issue of Law is involved in the attached appeal and that the applicant be granted leave to file the same.

The application is based on the grounds that the Nyeri Provincial Land Disputes Appeals' Committee flouted the rules of Natural Justice in that the applicant was denied opportunity to call his witnesses and to cross examine the respondents and their witnesses. That the 1st respondent and the applicant did not adduce evidence and the applicant lacked opportunity to cross-examine the respondent

The application is supported by the affidavit of Gideon Mwangi Chege who has deponed that he occupies parcels L.R. NO. NYERI/WATUKA/1102, 1103 & 1103 which parcels of land he has occupied for over 36 years and has developed the said land alone and paid all the trustee funds. The respondents filed the case against him in Mweiga Lands Disputes Tribunal which award he appealed against in Central Provincial Land Disputes Appeals' Committee. He believes that the rules of natural Justice were not observed as he was not given opportunity to present his case properly as all his witnesses were denied opportunity to adduce evidence. That the said Appeal Tribunal failed to give the applicant a chance to produce the vital documents and cross-examine the respondents and their witnesses occasioning serious miscarriage of Justice. That the 1st respondent who was conversant with the case as she is the mother of all the parties did not give evidence thereby denying the applicant chances to put questions across. That the applicant was heard partly and he was condemned unheard thereby flouting the rules of natural Justice.

The application is opposed by the 2nd Respondent who has filed a replying affidavit sworn on 8/9/2000.who states that the applicant has not developed the land as claimed in paragraph 3 but has sold 14 acres out of the land .Moreover that the applicant had two (2) witnesses namely JOSEPH NGOTHO and DUNCAN NDERITU who all gave their evidence in Chief. That further the Applicant is the one who choose not to cross-examine the Respondents. The 2nd Respondent deposes that the 1st, 3rd and 4th Respondents entrusted him to give evidence on their behalf and the applicant did not say that he

required all of them to give evidence because he did not even cross examine her. That in answer to paragraph 8 of the supporting Affidavit it is evident from the Tribunal Proceedings that the Applicant adduced his evidence and thus was not condemned unheard.

The matter came up for hearing on 12/11/2013 wherein the applicant was in person and submitted that the decision of the Tribunal should be quashed since the same did not have jurisdiction to entertain the case. Moreover he was not given the opportunity to present his documents and therefore he was not heard. He was called at the appeals committee, he went with documents but they refused to look at the documents and also refused to entertain the settlement Fund Trustee officer. Moreover he was not allowed to ask the respondent any question. He is the registered proprietor of the parcel of land and yet they gave it out to the respondent.

Mr. Karweru opposed the application on grounds that no appeal has been filed. The matter was commenced by notice of motion but not by memorandum of Appeal. The Memorandum of Appeal is merely annexed on the Notice of Motion. **Mr. Karweru** further argues that the notice of motion was filed by an incompetent person who did not have a practicing certificate. **Mr Karweru** further argues that the applicant is placing this court in a dilemma because he is proceeding against dead persons as the 1st and 2nd Respondents died.

The applicant respondent by stating that the appeal was filed on 29/8/2000. He does not have a receipt but he can look for it.

I have looked at the Notice of Motion dated 14/8/2000 and considered the submission of the applicant and Mr. Karweru. I have also perused the record herein and do find that there is no appeal on record. The applicant's case is not commenced by way of Memorandum of Appeal but by Notice of motion on which a memorandum of Appeal is attached. The prayer in the Notice of motion in summary seek for an order that the court certifies that an issue of law is "involved in the attached appeal" and the applicant be granted leave to file the "same".

What was to be filed" The appeal or points of Law"

Though Justice J.V.O. Juma as he then was dismissed "**the appeal**" as raising no point of law, and justice Sergon exercised his discretion by giving the applicant an opportunity to pursue "**his appeal**" by allowing the amended motion and setting aside the order by Justice Juma rejecting the "**applicants appeal**" and restoring "**the appeal**" and therefore allowing the parties to fix the motion dated 14/8/2000 for hearing inter parte, I do find that the two decisions were made in error as the applicant had not filed an appeal. If the applicant had filed an appeal he could either have disclosed to this Court the Appeal or shown the court the receipt he was issued when he paid the court fees for the appeal. I do find that the applicant has not filed an appeal.

There being no appeal , it would be an academic exercise to go into the merits of an appeal and therefore this court has no power to grant the application sought without an appeal. The same is

dismissed with costs.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF DECEMBER, 2014

ANTONY OMBWAYO

JUDGE



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