

REPUBLIC OF KENYA

High Court at Kakamega

Civil Appeal 24 of 2012

LAZARUS OMUSIKOYA WALEMBA APPELLANT

V E R S U S

JUSTUS KHAEMBA OMUSIKOYA 1ST RESPONDENT

R U L I N G

In his application dated 24/4/2012, the applicant is seeking stay of execution of the orders granted by the subordinate court in Mumias SPMCC Misc. Award No.11 of 2010. The applicant is also seeking to inhibit the Land Registrar from effecting any transactions in respect of land parcel number **EAST WANGA/ISONGO/3109**. The orders are being sought pending the hearing and determination of the appeal herein. The application is supported by the applicant's affidavit sworn on 24th April 2012.

Parties agreed to proceed by way of written submissions. Both parties filed their respective submissions. The respondent filed a replying affidavit sworn on the 15th of June 2012 while the applicant filed a supplementary sworn on 21st June 2012.

The brief background of the dispute is that the applicant filed claim number 23 of 2009 before the Mumias Land Disputes Tribunal claiming to occupy and work on plot number **E.WANGA/ISONGO/3109**. The Tribunal found in his favour and the award was filed before the Mumias court as Misc. Land Award No. 11 of 2010. On 7th April 2010, the Mumias court adopted the award as a judgment of the court both the applicant and the respondent were present.

Thereafter, the respondent filed an application dated 28th November 2011 seeking to have the decision of the court adopting the award as its judgment reviewed. The court heard the application and delivered its ruling on 24th January 2012 whereby the respondent's application was allowed and the adoption of the award was held to have been both illegal and unenforceable in law. That ruling triggered the filing of this appeal.

I will not be labour too much on the merits and demerits of the appeal or the application itself. It is unfortunate that the application was heard as the appeal could have been heard and determined once and for all as all the proceedings are type. The applicant's contention is that under the now repealed Land Disputes Tribunal Act No. 18 of 1990, the Mumias Court was only supposed to adopt the award. It had no jurisdiction to review its own orders adopting the award. On his part, the respondent maintains that the award was unlawful and the Tribunal lacked jurisdiction to entertain the dispute. The respondent lawfully bought the land for KShs.510,000/= and the property was later charged to the Co-operative Bank to secure a loan of KShs.1,700,000/=. The Bank was not a party to the dispute and the Tribunal did set aside the charge.

In order to determine the dispute fully, and having noted that the proceedings have already been typed, I do make the following orders.

1. The application dated 24.4.2012 is granted in terms of prayer four (4) and six (6).
2. The decision of the Mumias Land Disputes Tribunal is hereby suspended pending the hearing and determination of the appeal.

3. The appellant to file a proper record of appeal within thirty (30) days hereof.
4. Each party to meet his own costs of the application.

Delivered, dated and signed at Kakamega this 20th day of March 2013

SAID J. CHITEMBWE
J U D G E