



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HC. MISC. APPLICATION NO. 52 OF 2011

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI**

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT (CAP 26 LAWS OF
KENYA)**

AND

IN THE MATTER OF THE LAND CONSOLIDATION ACT (CAP 283 LAWS OF KENYA)

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT (CAP 284 LAWS OF KENYA)

AND IN THE MATTER OF OBJECTION NO. 2997 AND 2998

AND

IN THE MATTER OF LAND PARCEL NOS. 1842 AND 1863)

BETWEEN

**FREDRICK SIMON MBURUNGA 1ST APPLICANT
HUMPREY MURURU MBURUNGA 2ND APPLICANT**

VERSUS

**THE DIRECTOR OF LAND ADJUDICATION
AND
SETTLEMENT 1ST RESPONDENT
THE DISTRICT LAND ADJUDICATION AND
SETTLEMENT OFFICER-
TIGANIA
DISTRICT 2ND RESPONDENT
JAPHET MIRITI
THILANGE INTERESTED PARTY**

RULING

The application is a Notice of Motion dated 10th October 2011. It has been brought under S.S. 1A, 1B, 3, 3A, 63 (E) and 6 of the C.P.A and Order 51 rule 1 of the Civil Procedure Rules 2010.

The applicant seeks prayers as per order 3 as follows:-

“3. That this honourable court be pleased to stay the proceedings and set aside the temporary orders in Tigania SRM’s Court case No. 58 of 2011 pending the hearing and determination of this suit.”

The grounds of the application are cited on the face of the application as follows:-

1. *That while this matter was pending the respondent went to Tigania and filed SRMCC No. 58 of 2004 on 8/8/2011 and obtained orders over the same subject matter pending before this honourable court.*
2. *That the respondent rushed to Tigania Senior Magistrate Court when he realised that the applicant herein has filed the matter herein.*
3. *That the respondent has refused to respect this honourable courts order issued on 11.8.2011 alleging that he also has orders from a court of law.*
4. *That it is in the interest of justice and avoidance of multiplicity of orders that the Tigania Senior Resident Magistrate’s Civil Case No. 58 of 2011 should be stayed as it was filed after this suit.*

The application is supported by an affidavit sworn by the 1st *Ex parte* Applicant. The gist of the affidavit is that the deponent filed the instant suit on 7th July 2011 after he was dissatisfied with the manner in which the respondent handled his objection before them. That he served the respondent with the papers filed herein, and that the respondent rushed to Tigania SRM’s court and obtained orders which are conflicting with those granted by this court on 8th August 2011.

I see that the interested party in this suit has filed a replying affidavit in which he has contradicted himself. However, I think the affidavit is of no consequence because of the finding I will arrive at concerning this application.

The *Ex parte* Applicant in this case has in his supporting affidavit referred to the interested party herein as the respondent, which is not correct because the respondent has not filed any suit and neither is he a party in the suit filed before the lower court. Quite apart from that, the *Ex parte* Applicant has come to this court seeking judicial review orders. This is therefore a judicial review matter. Judicial review is governed by order 53 of the Civil Procedure Rules. The other Civil Procedure Rules do not apply to judicial review. The prayer sought in this application to stay proceedings of the civil suit before the lower court is incompetent and cannot be entertained.

The other thing of importance is the fact that the prayer sought in the substantive motion seeks to bring to this court and to quash a decision of the respondent, decision which, the *Ex parte* Applicant is challenging in this suit. The matter before the Tigania Court is for eviction on the basis of ownership of parcels of land, some of which are the subject matter of the judicial review orders sought by the *Ex parte* Applicant in this case. The case before the lower court and the case before this court are totally different. Even if the subject matter is land which may be the same subject matter in both suits, the consideration the court will make in each of these suits will be totally different Section 6 of the Civil Procedure Act does not apply.

In the circumstances, this court cannot stay the proceedings before the lower court within this suit. If the *Ex parte* Applicant is desirers to affect the suit before the lower court, he should make his application within the suit in the lower court. Alternatively, he should file a civil matter before this court seeking the orders that he now seeks in this application.

In the result, the *Ex parte* Applicant's application is incompetent and is struck out with costs in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 20TH DAY OF DECEMBER 2011.

**LESIIT J.
JUDGE**