



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Miscellaneous Civil Case 162 of 2009

**M'ARACHI M'MUTUNGI APPLICANT
VERSUS
GEORGE K. ARACHI MUTUNGI 1ST RESPONDENT
CHIEF MAGISTRATE COURT MERU 2ND RESPONDENT**

RULING

George Arachi filed a claim before the Meru Central District Land dispute Tribunal against his father M'Arachi M'Mutungi. He sought from the tribunal an order that his father give him a portion of the land he was cultivating on parcel number *NYAKI/KITHOKA/1880* and in so doing that a title be issued to him. That parcel of land is in his father's name. At the end of the hearing, the tribunal decided that his father would give him 2½ acres and a title deed would be issued for that portion. The decision of the tribunal is dated 17th February 2009. It seems as though the tribunal did not inform any of the parties of their decision but instead sent the decision to the Chief Magistrate Court in Meru. That case was registered in the Chief Magistrate's Court Meru as LDT No. 13 of 2009. George fixed the reading of the tribunal award by the Magistrate on 5th May 2009. The magistrate court did not sit on that day and the lower court's record shows that at the registry on that day fixed reading of the award for 2nd June 2009. M'Arachi is said to be blind. The minute in the lower court's record show that on 5th May 2009 there was a thumb print next to the order fixing the reading of the award on 2nd June 2009. On 2nd June 2009, the matter appeared before the learned magistrate who recorded that M'Arachi was absent. The court proceeded to read the award. Thereafter, George filed an application dated 27th August 2009 for the confirmation of the tribunal award as the judgment of the court. That application was fixed for hearing on 22nd September 2009. The learned magistrate noted that both George and M'Arachi were present before court. The proceedings of that day even indicate that M'Arachi stated that he had previously thumb printed the minutes fixing the reading of the award. M'Arachi has now moved to this court by a Notice of Motion dated 23rd October 2009. He seeks stay of the proceedings and execution of the Meru Central District Land Tribunal case No. 66 of 2008. In that application, he also seeks that the court will extend the period for filing an appeal out of time to the appeals committee. Section 7 (1) of the Land Dispute Tribunal provides that the chairman of Land Dispute Tribunal shall cause the decision of the tribunal to be filed in a magistrate court together with other documents used in the hearing before it. On the decision being forwarded to the magistrate court, the Act provides that it is entered as a judgment of the court in terms of the award. From the reading of section 71(1) (2), it becomes clear that the tribunal has a responsibility to read its decision to the parties. The period within which an appeal should be filed before the Appeals Committee, that is, 30 days [See Section 8(1)] runs from the date of the tribunal's decision. The magistrate court under the Act is not required to read the award. The responsibility of the magistrate is to enter judgment in terms of the

tribunal's decision. The jurisdiction of the tribunal is set out in Section 3(1) of that Act. That Section is in the following terms:-

- “ 3. (1) Subject to this Act, all cases of a civil nature involving a dispute as to-**
- (a) the division of or the determination of boundaries to land, including land held in common;**
 - (b) A claim to occupy or work land; or**
 - (c) Trespass to land.”**

From those provisions, one can discern that the tribunal in making its award exceeded its jurisdiction. On that issue, that is all I wish to say because that issue shall await another time. It is not before me for consideration. For now, the court is faced with an application for leave to appeal out of time. Looking at the Land Dispute Tribunal Act, there is no power therein to grant leave sought by M'Arachi. The Constitution of Kenya, however, and in particular Section 65(2), gives the High Court supervisory powers over subordinate courts. By virtue of that supervisory power, this court is well able to grant the leave sought by M'Arachi. In invoking the supervisory power I do so because, in my view, the tribunal erred in failing to read its award to the parties on the day which it reached its decision. Section 8(1) provides that a party aggrieved by the decision of the tribunal may file an appeal before the Appeal's Committee within 30 days from the date the tribunal reached its decision. The tribunal's decision in this case is dated 17th February 2009. It however did not inform any of the parties of its decision on that day. Instead, it sent its decision to the Chief Magistrate Court Meru and the learned magistrate read its decision on 2nd June 2009. By then, the period provided under section 8(1) to file an appeal before the Appeals Committee had long expired. Section 65(2) of the Constitution is in the following terms:-

“The High Court shall have jurisdiction to supervise in its civil or criminal proceedings before a subordinate court or court martial, and may make such orders, issue such rates and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by those courts.”

It was unjust for the tribunal to fail to read or to inform the parties of their decision on the day they reached that decision. In so doing, they denied the parties the right to file an appeal as provided under the Land Dispute Tribunal Act. The applicant's application has merit and I grant the following orders:-

- 1. I hereby stay the judgment in Meru Central District Tribunal Case No. 66 of 2008 and also stay the execution of CM Meru LDT Case No. 13 of 2009 pending the filing of an appeal before the appeals committee by M'Arachi M'Mutungi.**
- 2. Leave is hereby granted to M'Arachi M'Mutungi to file an appeal at the appeals committee tribunal from the decision of Meru Central District Land Dispute Tribunal case No. 66 of 2008 within 30 days from today's date.**
- 3. If M'Arachi M'Mutungi fails to file the appeal within 30 days from today the stay granted in number 1 above shall automatically be vacated.**
- 4. Since the tribunal's failure to inform the parties of its decision cannot be blamed on any party, I order that each party do bear their own costs.**

Dated and delivered at Meru this 12th day of March 2010.

MARY KASANGO
JUDGE