



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Miscellaneous Application 35A of 2009

KANYI MACERA.....APPLICANT

VESUS

JAMES MWANGI KANYI.....1ST RESPONDENT

SAMUEL NDAMBIRI KANYI.....2ND RESPONDENT

R U L I N G

In his Application dated 17.06.09, the applicant prays for 3 orders. Prayer No. 2 which is for injunctive orders and prayer No.3 which is for stay of execution are dependent on the outcome of prayer No. 1 which is to the effect

“ That this Honourable Court be pleased to grant the Applicant leave to Appeal in the High Court against the award and judgment entered in terms of award of Gichugu Land Disputes Tribunal dated 23rd January, 2008 in Kerugoya PMC LDT No. 99 of 2006 out of time”.

The same is supported by the Applicant's Affidavit dated 16.06.09, and opposed by the replying affidavit of the 1st Respondent and sworn on his own behalf and that of the 2nd Respondent dated 2.03.2010.

I have considered the application along with the rival affidavits. The Application revolves around only one point of law i.e. does an Appeal lie to this court from the decision of the Land Disputes Tribunal? The answer is clear and simple. It is “No”. The Land Disputes Act clearly spells out the procedure to be followed from the institution of the claim up to Appeal level. It is a self sufficient Act of Parliament that covers all aspects of its operation. The same must therefore be applied strictly and in isolation to the provisions of the Civil Procedure Act and Rules unless such are directly adopted by the Act.

Under Section 8(1) of the Land Disputes Tribunal act, any party who is dissatisfied with a decision of the Land Disputes Tribunal has 30 days within which to file an Appeal to the Provincial Appeals Committee. The Applicant herein did not do so. It is only from the decision of the Appeals Committee that an aggrieved party can come to this court under Section 8(1) of the Act on Appeal. This appeal must be on a point of law other than customary law which the Judge must certify before admitting such an Appeal.

There is therefore absolutely no right of Appeal from a decision of the Land Disputes Tribunal to this court. If such right does not exist, then the applicant herein cannot move this court for leave to file the said Appeal. Such a right of Appeal must exist in the first place. It does not in this case. The Application to extend time to file an Appeal that cannot lie before this court is a bad application and one that calls for dismissal.

The Application dated 17.06.09 is hereby dismissed with costs to the Respondents.

**W. KARANJA
JUDGE**

Delivered, signed and dated at Embu this 27th day of September 2010.

In presence of:- All parties & Mr. Munene for Mr. Ngigi for Respondent.