

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 32 of 2008

BENSON KABOI MWAI APPELLANT

Versus

JAMES KARIUKI MWAI RESPONDENT

(Being an appeal against the ruling of B. M. KIMEMIA – Resident Magistrate in the Senior Resident Magistrate’s Land Case No. 6 of 2005 at KARATINA)

JUDGMENT

The Land Dispute Tribunal Muranga by an award dated 30th May 2007 ordered for the eviction of the respondent from parcel no. **KIRIMUKUYU/MBOGOINI/633**. The appellant following that award filed an application before the Resident Magistrate Karatina to have the award adopted as the

judgment of the court. The order as sought was granted. The appellant by an application filed thereafter sought and obtained an order of eviction of the respondent. By a chamber summons dated 7th March 2008 the respondent sought stay of execution of that eviction order pending the hearing and determination of High Court Civil Appeal Nyeri No. 69 of 2007. By a ruling delivered by the Resident Magistrate Karatina on 30th May 2005 stay was granted pending the hearing of that appeal. The present appeal is filed by the appellant against the order of the magistrate of stay of execution. It is important to note that at this stage that the respondent’s HCCA No. 69 of 2007 was dismissed for the reasons that there was no certificate that the appeal raised points of law. That appeal was dismissed on 3rd September 2008. It is because of that dismissal that the appellant in submissions in this appeal submitted that the present appeal is now academic. The appellant in the Memorandum of Appeal had stated that the learned magistrate erred in law in holding that there was an appeal subsisting where stay could be granted. The power under which the magistrate entertained the land dispute matter is to be found in the Land Disputes Tribunal Act. That Act empowers the magistrate’s court to adopt the tribunal’s award as a judgment. I dare say that that act does not extend the magistrate’s powers beyond such adoption. In granting stay the learned magistrate imported the Civil Procedure Rules and Practice. The Land Dispute Tribunal Act is a complete act on its own. If it indeed allowed the importation of other law and in particular the Civil Procedure Act it would have so stated. In that regard I am in agreement with the submissions of the appellant that the learned magistrate erred in law. The respondent should have sought stay in the appeal filed in the High Court. On that ground alone the appeal succeeds. The judgment of this court is that the order of 30th May 2008 of the Resident Magistrate’s Court Karatina in Land Case No. 6 of 2005 is set aside and is substituted with an order dismissing the application in that court dated 7th March 2008 with costs to the appellant. The appellant is also awarded costs of this appeal.

MARY KASANGO

JUDGE

Dated and delivered this 14th day of May 2009

M. S. A. MAKHANDIA

JUDGE