

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 23 of 2008

M'ITWAMWARI KAIBUCHI APPELLANT

VERSUS

MUSA MBURUGU MUGAMBI RESPONDENT

RULING

The present application is a chamber summons brought under Order XXI Rule 22 and XLI Rule 4 of the Civil Procedure Rules. The application seeks stay of execution of the award of Land Dispute Tribunal Appeals Committee at Embu pending the hearing and the determination of this application.

That application was supported by the appellant's affidavit. He stated in that affidavit that the suit property namely NYAKI/KITHOKA/270 belonged to him. That that too was the ruling of Meru Central Dispute Tribunal. The respondent in this appeal filed an appeal at the Provincial Land Dispute Tribunal which then awarded him the suit property. The award was read on 2nd July 2007. Being dissatisfied with that award, the appellant filed this appeal. The appellant deponed that the respondent in this appeal even without waiting for the 30 days of appeal begun to cut down the trees on that suit property. It is on that basis that the appellant seeks stay of execution of the tribunal award.

In the replying affidavit filed in this matter, the respondent in this appeal stated that the proceedings before the tribunal were concluded on 23rd May 2006. He stated that the appellant had filed his appeal out of time and without leave. He opposed the application on that basis.

Although the appellant/applicant stated that the Appeals Committee award was read on 2nd July 2007, in my view, the reading of an award is made by the Tribunal and not the magistrate court. The Act is very clear on that matter that the role which the magistrate's court plays in Land Dispute Tribunal matter is to have the judgment of the Tribunal entered as a judgment of the court. The Act does not provide for the reading of the award by the magistrate.

It is on that basis alone on a *prima facie* basis that I find the appellant application unmerited. The order of this court therefore is that the Chamber Summons dated 1st August 2007 is hereby dismissed with costs being awarded to the respondent. Orders of stay that might have been granted previously in this matters are hereby discharged.

Dated and delivered at Meru this 16th day of July 2009

MARY KASANGO

JUDGE