



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**

**Civil Case 2 of 2008**

**DANIEL WAMBUA MUUNGUI ..... PLAINTIFF/APPLICANT**

**VERSUS**

**SIMON MUUNGUI ..... DEFENDANT/RESPONDENT**

**RULING**

1. On 23/4/2009, this court referred the dispute herein to the Chairman, Amutei clan, Mitaboni Location, Mr Phillip Matindi and to arbitrate on the same with the help of 4 elders, two to be chosen by each side. On 29/6/2009, the Chairman filed his award.

2. On 6/7/2009, advocates appeared and Mr Makau applied that the Chairman's award be expunged from the record as it was filed out of time and that the dispute should be referred to the District Surveyor and District Land Registrar. Mrs Nzei was of a different mind and was instructed to let the clan arbitrate on the matter. I was also shown a letter dated 23/6/2009 addressed to the clan Chairman in which Ms Onesmus N Makau & Co. Advocates acting for the Defendant seeking that the arbitral proceedings be called off and the matter referred to the District Surveyor.

3. I have carefully considered the Chairman's award dated 24/6/2009 and sadly, it merely repeats what happened when the panel visited the disputed parcel of land and no decision on any contentions matter is made. The award is therefore unhelpful and cannot be the basis for this court to make any orders for or against any party.

4. In the event, whilst I will not expunge it from the record, as it has certain facts that are important, the dispute before me relates to the following questions;

i. whether the Defendant annexed a portion of parcel No. 1889 Thinu Adjudication Section and joined the annexed portion as part of No. 27 Thinu Adjudication Section.

ii. whether therefore there is need to return the annexed portion as part of parcel No. 1889 aforesaid.

5. These two questions can be addressed by the District Surveyor visiting the disputed portions and answering the above questions.

6. In the event, I agree that the District Surveyor should visit the disputed land and clarify the above two issues and thereafter file a report within 60 days.

7. Orders accordingly.

Dated and delivered at Machakos this **13<sup>th</sup>** day of **July** 2009.

**ISAAC LENAOLA**

JUDGE

In presence of: **Mr Makau for Defendant**

**Mrs Nzei for Plaintiff**

**ISAAC LENAOLA**

JUDGE