



**REPUBLIC OF KENYA**

**HIGH COURT AT MACHAKOS**

**CIVIL CASE 209 OF 2008**

**WAIU NZALU ..... 1<sup>ST</sup> PLAINTIFF**

**MUTUKU NZALU ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JAMES NGOMO MBWIKA ..... 1<sup>ST</sup> DEFENDANT**

**MAKUENI LAND DISPUTES TRIBUNAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaint in this suit was filed on 17/11/2009 and certain orders are sought against the 2<sup>nd</sup> Defendant Tribunal. Its decision in Land **Case No. 211 of 1998** is being challenged and the 1<sup>st</sup> Defendant was the successful party in that case. The validity of the suit is being challenged in a Statement of Defence filed by the 1<sup>st</sup> Defendant on 23/12/2006 and at paragraph 7 thereof, the 1<sup>st</sup> Defendant has intimated that it will seek to have the suit struck off on a point of law but to-date no such application has been made. On 30/1/2009 the Plaintiffs filed an Application under Order IXA Rule 7 of the Civil Procedure Rules seeking leave to have judgment entered against the 2<sup>nd</sup> Defendant for failure to enter appearance and file a defence to the suit.

2. Sadly, whether or not the Application is merited in law is not an issue that I should delve into because when I retired to write the present Ruling, it occurred to me that in fact the Tribunal was never properly served with the Summons to Enter Appearance. I say so because the Affidavit of Service by John Mutinda Muasya is a mere annexure to the Supporting Affidavit sworn by Mutua Makau, Advocate on 29/1/2009. It has not been filed in accordance with Order V Rule 15 of the Civil Procedure Rules. Even if it had, there is in fact no service on the Tribunal. The person served is an unnamed D.O (District Officer) at Wote Township. A District Officer who is unnamed cannot be a proper person to be served on behalf of the Makueni Land Disputes Tribunal which is a statutory *quasi-judicial* body with a Chairman and Members who ought to be known as their appointment is publicized in the Kenya Gazette.

3. There being no proper service, the Application before me is premature and while dismissing it, let the Plaintiffs serve the Summons afresh on the proper membership of the 2<sup>nd</sup> Defendant as is the law.

4. I shall make no order as to costs.

5. Orders accordingly.

Dated and delivered at Machakos this **18<sup>th</sup>** day of **September** 2009.

ISAAC LENAOLA

JUDGE

In presence of: **Mr Musyoka h/b for Mr Makau**

ISAAC LENAOLA

JUDGE