



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Civil Appeal 169A of 2008**

**(Being an appeal from the decision of the Land Disputes Appeals Committee in Nakuru  
Land Disputes Appeals Committees Appeal Case No. 68 of 2007)**

**SILUS SAITABAW SOROPAY.....APPELLANT**

**VERSIS**

**MR. PAITA KIONO.....RESPONDENT**

**RULING**

The parties to this suit are neighbours who have had a long standing boundary dispute. In 2006, they took the dispute to the Kajiado Land Dispute Tribunal which ordered a survey of their pieces of land by the District Surveyor to place the boundary beacons and give each party the correct acreage as stated in the title deeds. The plaintiff's appeal to the Rift Valley Provincial Land Disputes Appeals Committee was dismissed and the Kajiado Land Disputes Tribunal's decision upheld thus provoking this Appeal. Simultaneous with the filing of the Appeal, the Appellant has applied under **Order 39 Rules 1 and 2** of the **Civil Procedure Rules** as well as under **Sections 3A and 63(e)** of the **Civil Procedure Act** for a stay of the implementation of the Appeals Tribunal's decision and an injunction to restrain the Respondent from in any way interfering with the Appellant's land known as **Title No. Kajiado/ Kaputiei North/ 123** until this Appeal is heard and determined.

I agree with counsel for the Respondent that the inherent jurisdiction of this court under **Sections 3A and 63(e)** of the **Civil Procedure Act** is invoked where there is no provision covering a given situation. In this case stay of execution is provided for under **Order 41** of the **Civil Procedure Rules** and should have been invoked. However, the Appellant is perfectly entitled to apply under **Order 39** of the **Civil Procedure Rules** for injunction pending appeal. As an order of injunction will have the same effect as a stay, I find that his application is therefore not incompetent.

On the merits of the application for injunction, I find that the issue as to whether the Tribunals had jurisdiction to deal with the matter is a pertinent one given what is stated in paragraph 5 of the replying affidavit that what is disguised as a boundary dispute could turn out to be an excision of a large chunk of land. In the circumstances I grant the application for injunction and order that pending the hearing and final disposal of this Appeal, the Respondent by himself, his servants and/or agents, is hereby restrained from entering onto or in any way interfering with the Appellant's land known as Title No. Kajiado/ Kaputiei North/ 123. The costs of this application shall abide the out come of the appeal.

**DATED and delivered this 25<sup>th</sup> day of November, 2009.**

**D.K. MARAGA**

**JUDGE.**