



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUNGOMA  
Civil Appeal 58 of 2007**

**RASOA NABIFWO WATAKA .....1<sup>ST</sup> APPELLANT**  
**TEBULA MUKOYA BURANDA ..... 2<sup>ND</sup> APPELLANT**  
**~VRS~**  
**PETER WAMALWA**  
**KIBERENGE.....RESPONDENT**  
**RULING**

This is a ruling on a preliminary objection dated 17<sup>th</sup> March 2008 raised by the Respondent's Advocate, Mrs Mumalasi against the hearing of this appeal. The objection is based on the fact that leave for filing this appeal was not sought. The appeal is against the adoption of the award by the magistrate but not in respect of the legality of the decision of Provincial Appeals Board. The counsel urges this court to strike out the appeal for contravening section 75 (1) of the Civil Procedure Act.

Mr. Situma for the Appellant opposed the objection on grounds that no leave of the court to appeal was required. The Appellant appeals against the orders of the magistrate on adoption of the award as judgment. He submitted that there is an automatic right to appeal against the magistrate's judgment and the issue of leave to appeal does not apply.

I have addressed myself on the issues raised and the responses herein. The Appellant appeals against the ruling of the magistrate in adopting the award of the tribunal as judgment. This is an appeal that is not provided for under the Land Disputes Tribunal Act. It does not lie as a matter of right. The Appellant ought to have sought the leave of the magistrate court to appeal against the said ruling. It is not disputed that no leave was obtained. On perusal of the court record, I note that my sister Justice W. Karanja ruled on the same issues in her ruling delivered on the 10<sup>th</sup> August 2008. I agree with that ruling that the appeal does not lie as a matter of right and that leave to appeal was mandatory. The appeal herein was filed without such leave and it is therefore not properly before the court.

For these reasons, I uphold the preliminary objection and strike out this appeal with costs to the Respondent.

**F. N. MUCHEMI  
JUDGE**

*Dated, Delivered and Signed at Bungoma*

*This 11<sup>TH</sup> day of November 2009 in the presence of*

*Mr. Kakoi for Situma for appellants and Mr. Kraidu for Mumalasi for respondents.*