



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**Civil Case 129 of 2007**

**SALIM CHINDORO MWERO ::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**CHIDZAO NYIRO :::::::::::::::::::::::::::DEFENDANT**

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**RULING**

**This case** relates to the dispute between the parties on the ownership of the unadjudicated piece of land situate in Kinango District which was the subject matter of claim No. 9 of 2006 in the Kinango District Land Disputes Tribunal. In that case the Tribunal ruled that the land belongs to the defendant. Aggrieved by that ruling the plaintiff filed Appeal No. 39 of 2007 in the Coast Provincial Land Disputes Committee which has not been heard.

In the meantime, the plaintiff claims, the defendant has, without first getting that award adopted by the Kwale Resident Magistrates Court and a decree drawn, moved into the land and started cutting down the plaintiff's mango trees and generally clearing the land for cultivation. The plaintiff is fearful that that will change the character of the land and deface the boundary lines. He has therefore along with the filing of this suit applied for an injunction to restrain the defendant from interfering with the land until the said appeal is heard and determined.

Besides counsel for the defendant pointing out that this application should have been made to the Tribunal under Order 41 and not under Order 39 of the Civil Procedure Rules counsel for the parties chose to rely on the pleadings and never made any submissions.

Like the Business Premises Rent Tribunal I do not think that the Land Disputes Tribunal has jurisdiction to issue injunctions. This suit is therefore properly before this court although it should have been filed before the Subordinate Court.

In his defence the defendant denies having entered the disputed piece of land. That being the case no prejudice will be caused to him if he stays out of the land until the appeal is heard and determined.

I therefore allow the application as prayed. As I have said this suit, should have been filed before the Subordinate Court. The same is hereby transferred to the Senior Resident Magistrate's court at Kwale for hearing and final disposal.

**DATED and delivered this 16<sup>th</sup> day of January 2008.**

**D.K. MARAGA**

**JUDGE**