



**PHILIP GITARI NJAGI.....1<sup>ST</sup> APPELLANT**

**SAMSON GICHOBI NJAGI.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**STEPHEN MACHUKA NJAGI.....RESPONDENT**

**JUDGMENT**

The Appellant appeals against the decision of Hon. D.M. Wanguru dated 17/11/1998 in D.M Arbitration Case No. 10 of 1998.

From the record it is clear that the disputed plot is a Rice Holding under the Irrigation Act Cap 347. The grounds of appeal are three that the Trial Magistrate erred in departing from the provisions of Land Disputes Tribunal Act and that the Trial Magistrate gave conflicting orders and by declaring the arbitration order was res judicata.

I have perused the record on 25/6/1998 before court the parties Appellant and Respondent appeared. The court issued a ruling dismissing the whole arbitration proceedings. Thereafter on 16/10/98 parties present there was before the court an application dated 18/7/1998 seeking review of orders made on 25/6/1998. The appellant was there seeking right to occupy and to work on plot No.1611 Mwea Irrigation Scheme and after the Land Disputes Tribunal heard the complaint. It was ordered that the 4 acre rice filed be divided so that the Appellant can use and manage 2 acres thereof. It has to be noted that rice holdings are managed and occupied in accordance with regulations made under the Irrigation Act by the Irrigation Board.

A perusal of the record shows that the Trial Magistrate on 24/4/1998 slipped. Firstly he read the arbitration award **“loudly”** in open court and said **“it becomes a court order”** Then immediately afterwards remembered there was a Misc. Case No.17/83 which was decided on 12/7/1998 by consent of the parties.

On 25/6/98 is the date he made a ruling making finding that in Succession case number the Respondent was appointed successor of his father in respect of Rice Holding 1611 and a consent order was entered as Judgment. The Trial Magistrate proceeded to dismiss the arbitration proceedings. But it is clear the ruling concerning this appeal is the one made on review application dated 17/11/98.

In this ruling after hearing Counsel for Appellant he made a finding that the arbitration proceedings were res Judicata as the claim was subject matter in Succession No. 17/83 which was heard and determination on 12/7/83 (15 years ago then).

He referred to Section 4 (4) of Limitation Act Cap 22 and also Section 13 (3) of Land Disputes Act which provides that nothing shall confer jurisdiction on Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or any proceedings which has been heard and determined by any court. The Trial Magistrate rejected the application for review.

Therefore the Trial Magistrate was following the law as set out in Land Disputes Tribunal and ground one of Appeal has no merit. Regarding the ground numbered 2 it is clear there was a slip. The trial Magistrate made correct order after reminding himself of proceedings in Misc.17/83.

On ground 3 the Trial Magistrate did not error in finding the arbitration order was res judicata. The order was made by the tribunal without jurisdiction.

In the circumstances I find no merit in this appeal and the same is dismissed with costs.

Dated this 15<sup>th</sup> January, 2008.

**J. N. KHAMINWA**

**JUDGE**

**15/1/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Appellants Philip and Samson – Present**

**Respondent – present in person**

Judgment read in open court.

**J. N. KHAMINWA**

**JUDGE**