

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc.Civil Appli. 313 of 2008

NANCY ADDAH WAMBUI..... APPLICANT

V E R S U S

THE PRINCIPAL MAGISTRATE'S COURT AT MURANG'A 1ST RESPONDENT

MURANG'A LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

R U L I N G

Before me is an ex-parte Chamber Summons dated 28th May, 2008 filed by M/S Kimandu Gichohi & Company advocates for the applicant. It was brought under Order 53 rule 1 and 2 of the Civil Procedure Rules and all other enabling provisions of the law. It seeks leave to file Judicial Review proceedings for orders of certiorari arising from the adoption of Murang'a Land Dispute Tribunal Award in Murang'a Principal Magistrate's Land Disputes Tribunal case No. 92 of 2002. It also seeks for orders that the leave, if granted, do operate as a stay of the decision of the Muranga Principal Magistrate's Court.

The application was filed with the statutory **STATEMENT OF FACTS** as well as **VERIFYING AFFIDAVIT** as required by law.

At the hearing of the application, Mr. Gichohi for the applicant submitted that the matter was urgent, and that a certificate of urgency was filed. Counsel submitted that the subject land was registered in the sole name of the applicant. At the Land Tribunal case, the applicant was not summoned, but his late husband was called before the Tribunal. Counsel contended that Implementation of the award would be prejudiced to the applicant, as she stood to be evicted from her home which stands on the property. Therefore, there was need for grant of leave to file Judicial Review proceedings as well as stay orders.

I have considered the application, documents filed and submissions of Counsel for the ex-parte applicant. From the documents filed, it appears that the applicant is the sole registered owner of the subject property land parcel LOC. 18/GITHIMA/434- in Kigumo Division. The applicant also does not appear to have been called to appear and be heard by the Murang'a Land Disputes Tribunal.

From the facts before me, I am of the view that the applicant has a sufficient interest as the apparent registered proprietor of the subject land. In my view, she has also demonstrated a *prima facie* arguable case regarding the exercise of jurisdiction on registered land by the Murang'a Land Disputes Tribunal, without even being given a chance to be heard as the registered proprietor. I am also of the view that if stay orders are not granted, the applicant is likely to suffer substantial irreparable loss.

For the above reasons, I allow the application and order as follows-

- 1. Leave be and is hereby granted to the applicant to file Judicial Review proceedings as requested in prayer 2 of the Chamber Summons. The main motion will be filed within 21 days from today.**
- 2. The grant of leave above will operate as a stay as requested in prayer 3 of the Chamber**

Summons provided that the main motion is filed within 21 days from today, and in default the stay orders herein granted will automatically lapse.

3. *Costs in the cause.*

Dated and delivered at Nairobi this 6th day of June, 2008.

George Dulu

Judge.

In the presence of-

Mr. Gichohi for applicant – Mr. Ndirangu holding brief.

Mwangi court clerk.