



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

Misc. Appli. 176 of 2002

VERONICAH WAIYAI WANJIE.....APPLICANT

VERSUS

LAND DISPUTE TRIBUNAL KIAMBU & ANOTHER.....RESPONDENTS

RULING

APPLICATION 9.10.08 SEEKING TO DISCHARGE ORDERS OF STAY

1. Background

1. This is a family dispute touching upon land parcel No. LR Ndumberi/Ndumberi/2762. The dispute was referred to various form for hearing but finally ended with the Lands Dispute Tribunal in Kiambu.
2. The proprietor of the suit land Veronicah Waiyai Wanjie had sub-divided her land and distributed it to her children. She nonetheless fell out with one of her two sons called Stephen Ngige Waiyai and decline to give him land, save a parcel in Nyahururu.
3. The tribunal held that Stephen Ngige Waiyai be given portion of the land (No 4/06) The applicant (mother) appealed to the Provincial Lands Disputes Tribunal on 3rd July, 2006 case No. 12/2006.
4. The court at Kiambu Senior Magistrates court noted that the award had not been read by the parties. This was so read on 20th June, 2006 at the tribunal. The award was made the judgement of the court on 30th August, 2006.
5. The applicant (mother) filed this Judicial Review Proceeding on 1 March, 2006 and prayed for leave together with a stay of proceedings.
6. The leave to bring Judicial Review Proceeding was certified as urgent; leave was then granted to bring such proceeding and that the leave operate as a stay.
7. The Hon. Judge has such been transferred outside the jurisdiction of Nairobi. Twice the matter was mentioned before the presiding judge of the Constitutional and Judicial Review bench. Once the advocate for Stephen Nguge Waiyai appeared.
8. The matter was referred to the Land and Environmental Law Division for hearing.
9. The advocate for Stephen Nguge Waiyai made enquiries as to whether a Notice of Motion had been filed. The registry informed him that his client was not party to this matter. When the advocate, nonetheless without orders of court, filed an application of 9.10.08 praying for orders that:-

1. “The orders issued on 2 March, 2007 [granting leave to bring Judicial Review Proceedings and stay against the property] be discharged and varied.”

10. The advocate for the applicant was served with this application together with the state counsel. The said advocate failed to attend court indications being that he was indisposed. The court proceeded with the application Order 1XB r 3 a Civil Procedure Rule.

II Application 9.10.08

11. What does a party do when orders are made staying his activities of sub diving land yet he is not party to the suit nor enjoined to the case before court?

12. The advocate for Stephen Ngige Waiyai should have applied to be enjoined to this matter as an interested party. It is regretted that he was never named as an interested party but this may have been an oversight. Format of Judicial Review proceeding are explained in the case law of:-

Farmers Business Service & Others

v

The Transport Licensing appeal tribunal

(1959) EA 379 and I will not dwell on this for the moment.

13. Once the advocate has been enjoined he then should apply to court to bring up the issue that a stay had been prescribed but no substantial application has been made (His locus is questionable now)

14. If per chance the said advocate was properly on record and did bring such application the advocate for the applicant was given orders that:-

“The substantive motion is not filed within the period prescribed in law then leave hereby granted shall lapse automatically and be of no effect.”

15. The subscribers under Order LIII r 3(1) that the notice of motion application shall be made within 21 days. The 21 days have lapsed. The orders of stay requires to be removed according to the advocate for Stephen Ngige Waiyai.

16. Under order LIII r 2 Civil Procedure Rule it produce that where the application is for certiorari and an appeal is preferred or the time is yet to expire the application for leave may be adjourned until the appeal is delivered.

17. In my interpretation there is already an appeal filed to the Provincial Land Disputes yet to be heard. The said Stephen Ngige Waiyai has proceeded to acquire his title. The stay of his doing this has necessitated him to come to court without locus.

18. The advocate as an officer of the court is aware that the tribunal has no powers to decide a land dispute on ownership of land. The issue of jurisdiction is in question.

19. I would reject this application on grounds that the advocate is irregularly before this court. He did not seek the courts leave to be enjoined to this matter and as such his application is accordingly struck out.

DATED THIS 26 DAY OF SEPTEMBER 2008 AT NAIROBI.

M.A. ANG’AWA

JUDGE

Kaburu M. instructed by Kaburu Miriti & Co. Adovcates for the plaintiff/applicant

Gathii & Co. Adovcates for the 1st respondent- absent

E. Vitta instructed by Attorney General for the 2nd and 3rd defendant / Respondent