



REPUBLIC OF KENYA

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

Civil Case 3 of 2008

FRANCIS MUTURI BUURI APPLICANT

AND

MUKURWEI-INI LAND DISPTUES TRIBUNAL 1ST RESPONDENT

CHIEF MAGISTRATE- NYERI 2ND RESPONDENT

BERNARD KIHARA BUURI 3RD RESPONDENT

RULING

APPLICATION TO SET ASIDE ORDERS DISMISSING CASE DATED 7 MARCH 2008

I: Background

1. The applicant appellant herein had a dispute over land between his brother Benard Kihara Buuri and himself.

2. The Land parcel in question is LR Muhito/Mbiuini/1385 that was a partition/sub division for original land Muhitu/Mbiuini/ 666. Both the applicant and his brother occupied this portion of land. A dispute arose as how the apportionment of the property should be done. The matter proceeded to the Land Disputes Tribunal at Mukuweini case No.4/2004 and the tribunal then apportioned the suit land between the two brothers.

3. Being dissatisfied with the decision of the tribunal, the appellant filed this judicial review. On the day called out for hearing on 21.02.08, the court dismissed the application on grounds of non attendance by the applicant to court. On

12 February 2008 the applicant had personally appeared before

K. Kariuki whereby he did not comment that the verifying affidavit did not comply with setting out the facts as laid out in **CA 45/2002 Commissioner General KRA v Silvana Awaki.**

4. The status then of the application was one to seek leave to bring judicial review proceeding. As the said application had now been dismissed for non attendance and the applicant now prays for it to be reinstated by application of 7 March 2008 then it seems that service upon other parties was directed to be made.

5. On the date of hearing application 7.3.08 only the advocate for defendant No.3 attended for

hearing.

II: Application 7.3.2008

6. The applicant argued that he was directed to the wrong court and was the reasons he did not appear. He prayed for reinstatement of suit.

7. The respondent No.3 stated that the application has no merit having been brought under the wrong rules.

II: Opinion

8. The reasons the duty judge entertained the applicant was because he appeared in person.

9. I would accordingly do the same to permit the applicant to access the court and justice and be heard.

10. I accordingly allow the application and set aside my orders of 21 February 2008 dismissing this matter for non attendance of the applicant to court with costs to 3rd respondents.

DATED THIS 24TH DAY OF SEPTEMBER 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

Francis Muturi Buuri – the plaintiff/applicant in person – present

Gatumuta instructed by Gatumuta C.K. Advocates for the 3rd Respondent