



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Civil Appeal 23 of 2008

ISAACK MURATHI MISHECK

APPELLANT

VERSUS

JACKSON MURUNGI TOMWITHIA RESPONDENT

RULING

The applicant's appeal to the Eastern Province Appeals Committee being Appeal No. 70 of 2005 was dismissed and being aggrieved by that dismissal the applicant has preferred an appeal to challenge that decision. In the meantime the applicant has brought the instant application for three main orders, namely stay of execution of the award and any further proceedings in L.D.T. No. 13 of 2005 pending the hearing and determination of this appeal. It also seeks a certificate that the appeal involves issues of law and finally that the appeal be admitted.

The respondent has not replied but has instead filed a notice of preliminary objection to which this ruling relates. The point in the objection is that both the appeal and application are an abuse of the court process. That the application is incurably defective and finally that since the Appeals Committee dismissed the appeal on the ground that it had no jurisdiction this court similarly has no jurisdiction to entertain the appeal.

For the applicant/appellant it was submitted that the appeal to the Appeals Committee was improperly dismissed as the Appeals Committee had jurisdiction.

In terms of **Mukisa Biscuit Manufacturing Co. Ltd V. West End Distributors** E.A. 1969 page 696 this preliminary objection is properly taken as it raises the issue of this court's jurisdiction which if successfully argued is capable of disposing of the appeal or the application.

The High Court's jurisdiction in the Land Disputes Tribunals Act is limited by section 8(9) as follows:-

“(9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:-

Provided that no appeal shall be admitted to hearing by the High Court unless a judge of that court has certified that an issue of law (other than customary law) is involved.”

The role of the High Court is clearly spelt out as the hearing of appeals from the Appeals Committee. It

is therefore only the decision of the Committee that may be stayed pending appeal. But even that is in doubt as the Act does not provide for stay pending appeal or at all. Although the Minister is enjoined by section 10 of the Act to make rules with regard to, among other things, procedural requirements in relation to appeals, no such rules, to the best of my knowledge, have been made.

Since under the constitution the High Court supervises courts and tribunals subordinate to it by various means the only way for the applicant to ensure the maintenance of *status quo* while challenging the decision of the Appeals Committee would have been to invoke the provisions of Order 53 of the Civil Procedure Rules by bringing judicial review proceedings.

Stay of execution under Order 41 rule 4 of the Civil Procedure Rules is not available to the applicant. It is not even available to stay the decision of the Appeals Committee because that decision is incapable of being stayed as it was an order of dismissal.

To the extent that a stay of execution cannot be granted, the objection is sustained in respect of prayer 2 of the application. Since the objection has partially succeeded the costs will be in the appeal.

Dated and delivered at Meru this 14th day of November 2008.

W. OUKO

JUDGE