



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

Misc Civ Appli 52 of 2006

DANIEL MWANGI MUCHIRA.....APPLICANT

VERSUS

JAMES KAMAU MWANGI.....1ST RESPONDENT

CHAIRMAN KAHURO DIVISION LAND DISPUTES TRIBUNAL...2ND RESPONDENT

RULING

Notice of Motion dated 7/6/2006 seeks orders of:-

- (1) Certiorari to quash the decision of Kahuro Division Land Disputes Tribunal in Case No. 12 of 2004 and
- (2) Proceedings before **Murang'a Senior Principal Magistrate's Court in Land Disputes Tribunal No. 43 of 2006** in respect of parcel **No. Loc. 8/Munyutha/Ndutumi/190**.

The application is supported by statutory statement setting out the grounds upon which orders are sought affidavit in verification of facts sworn by Daniel Mwangi Muchira the ex parte applicant. There is a spirited effort to terminate the application by preliminary objection filed by first Respondent. He states that these proceedings are time barred as having been filed outside the prescribed time. However the record shows that leave was granted on 31/5/2006 after the application was made on 26/5/2006.

The annexures show that the Tribunal case was heard and decided on 9/3/2005. The award was received at Murang'a Law Courts on 15/3/2006. The award of the Tribunal does not become a decree that can be executed until it is filed in Resident Magistrate's Court and subsequently adopted as court decree. I do not therefore find these proceedings as having been filed out of time. Regarding the merit of this application I have noted that the land in dispute is registered land under the Registered Land Act Cap. 300. Annexure "DMM1" indicated the Exparte Applicant as Registered proprietor since 1974.

I also note that the ex parte applicant did not participate in the proceedings before the Tribunal thus is in the breach of rules of natural justice.

Upon considering all submissions made by Counsel and upon reading the Motion and Statutory statement with verifying affidavit and annexures, I am satisfied that the decision of the Tribunal was reached without jurisdiction and contrary to provisions of section 3 (1) and 13 3) of the Land Disputes Tribunal Act 18/90.

I therefore allow the application and grant orders as prayed.

No order as to costs.

Dated this 13th March, 2007.

J .N. KHAMINWA

JUDGE.

13/3/2007

Khaminwa – Judge

Njue –Clerk

First Respondent present in person

Ruling read in open court.

J. N. KHAMINWA

JUDGE