



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

**AT EMBU**

**Civil Case 54 of 2006**

**JAMES WARIUWA GACHANJA**

**SAMMY GACHANJA WARIUWA**

**GIDEON GEORGE WAMAE WARIUWA**

**PATRIC KAMAU**

**WARIUWA.....APPLICANTS/APPELLANTS**

**VERSUS**

**LEAH KASYOKA MWILU.....  
RESPONDENT**

**RULING**

By Notice of Motion dated 3<sup>rd</sup> August 2006 the applicant seeks order for the stay of Execution of decree in Wanguru Arbitration No. 16 of 2005 pending hearing and determination of the appeal filed herein.

The applicant is one of the registered owners of a registered parcel of land. The decision is said to affect people who were not parties to the suit and therefore it is contrary to the rules of natural justice and has good chances of success and the same will be rendered nugatory unless the orders are granted.

The application is opposed. Grounds of opposition are filed relating the fact that the applicants are not party to the suit and have no right of appeal and they have no locus to institute the purported appeal and therefore the Appeal lacks merit is frivolous and an abuse of court processes .

Upon considering arguments from both parties it is my finding that the whole process of arbitration by the tribunal and the adopting of the award was defective. Any tribunal and any ordinary court must refrain for making orders before the production of the abstract of title. And therefore they breached the basic law of natural justice. “Audi alteran Partem” hear the other side also” A person who is about to be divested of his property particularly land is a person interested in the proceedings and must be heard before the decision to take away his property is made.

In my view this appeal has good chances of success. However the rules of court have set out the

requirements to be fulfilled before orders can be made under Order XLI rule 4 firstly the court must be satisfied that substantial loss will be suffered if the order is not granted .

In this case the loss of land rights already guaranteed under registered land Act Cap. 300 before one is given a chance to be heard, in my view is substantial loss.

Secondly, the court must be satisfied that the Applicant has given security. I order that the applicant shall pay shs.25,000/= as deposit within the next 21 days from today. Failure to do so the stay hereby granted shall lapsed. The application is allowed in the above terms

Orders accordingly.

Dated this 6<sup>th</sup> March, 2007

**J. N. KHAMINWA**

**JUDGE**

**6/3/2007**

**Khaminwa – Judge**

**Njue - Clerk**

**Ms. Ndorongo for Applicant**

**Ruling read in open court.**

**J. N. KHAMINWA**

**JUDGE**