



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**  
**Civil Suit 203 of 2006**

**REUBEN NDALILA KAWANGA ..... PLAINTIFF**

**VERSUS**

**MAINASA AMBROSE SIMIYU ..... DEFENDANT**

**R U L I N G**

This suit was filed by the Plaintiff on 28<sup>th</sup> December, 2006. It seeks, inter alia, an order of Declaration that the proceedings before the Kiminini Land Disputes Tribunal are null and void and the subsequent decree in Kitale Chief Magistrate's Court Land Case No. 37 of 2004 be reviewed and set aside.

The Defendant filed his defence on 5<sup>th</sup> February, 2007. The Application before me is for an Order of stay of proceedings in Kitale CMC Land Case No. 37 of 2004 the decree of which is the subject-matter of this suit.

I have considered the application and submissions by Counsel. It is true that it would appear that the Tribunal ought to have been enjoined as a party in this suit. The suit has just begun. A Defence has been filed. The question of amendments and joinder are still capable of being taken up in due course.

It is my view that any proceedings taking place in Kitale CMC Land Disputes Case No. 37 of 2007 would render this suit nugatory.

In the interest of justice and fairness, I think that the Applicant is entitled to be heard on the merits. If the suit is defective, that aspect is not before me and can be the subject matter of striking out on other grounds.

For now, I do hereby grant prayer 1 of the application. Costs shall be in the cause.

DATED AND DELIVERED AT ELDORET ON THIS 6<sup>TH</sup> MARCH, 2007.

M. K. IBRAHIM

JUDGE