



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 34 of 2007

M'MUGAA M'RWITO.....PLAINTIFF

VERSUS

JOSEPH MUKUNI M'RUMITHIUDEFENDANT

RULING

The applicant in the Chamber Summons before me is seeking “...*an order staying the execution of the Resident Magistrate’s order given on 14th March, 2007 in LDT Case No.46 of 2006(Maua) until this case is heard and determined*”.

The application is not opposed. It is conceded that the dispute emanates from the decision of the Meru North Land Dispute Tribunal. There is no contention that the Tribunal’s decision was presented to the magistrate’s court in accordance with the provisions of Section 7 of the Land Dispute Tribunals Act.

The jurisdiction of the magistrate’s court under that provision is limited, upon receipt of the decision and any depositions or documents, to entry of judgment and issuance of a decree.

Any party to the dispute who is aggrieved can only appeal to the Appeals Committee in the province concerned. The decisions of the Appeals Committee lie to the High Court on points of law. It is emphasized that under the Land Dispute Tribunals Act, the High Court’s intervention in matters provided for under the Act is limited to appeals as explained above.

Of course, the High Court has jurisdiction both under the Constitution and the Law Reform Act to supervise tribunals and courts subordinate to it. The plaint filed herein seeks:-

- (a) *a declaration that the ruling LDT No.46 of 2006 is null and void.*
- (b) *the cancellation of the defendant’s transfer of L.R Njia/Burieruri/1271 and rectification of the register, and*
- (c) *costs of this suit.*

Looking at both the plaint and the application before me, it is clear that the applicant has deliberately

circumvented the procedure and the law to try and get what is not available through the route he has taken. However, he has been candid in his averment in paragraph 11 of the supporting where he deposes that:-

“11. That further, on 8th December, 2006, I filed an application for leave to file judicial review in HC.Misc.Application No.197 of 2006 which application was fixed for hearing on 15th February, 2007 and which application could not be heard because of Legal Notice No.300 of 2007.”

Clearly the applicant legal adviser was aware of the avenue to challenge the judgment but abandoned it in view of the L.N.300/2007 hence this suit and application.

That was not proper decision as the L.N.No.300/2007 does not and cannot outlaw judicial review applications. It only centralizes the court where such applications can be filed and heard.

I have already set out the relief sought in this application. Essentially it is seeking orders against the magistrate at Maua. That is not tenable in Chamber Summons.

See also Order 53 rule 3(1) (2) of the Civil procedure. I have noted lately, at least since the L.N.No.300 of 2007 came in force, that matters purely falling under the preview of prerogative orders are being filed either as injunction or stay of execution merely because parties or counsel do not want to go to Nairobi.

This, in my view amounts to an abuse of the court process. I find that this application lacks merit and dismiss the same with no orders as to costs.

DATED AND DELIVERED AT MERU THIS 15th DAY Of June, 2007

W. OUKO

JUDGE