

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 11 of 2007

JAMES NGINYA KAGO APPELLANT

VERSUS

PATRICK WAITITU MUCHAI 1ST RESPONDENT

WAIRIMU WAITITU 2ND RESPONDENT

RULING

This is an application for stay of execution of the Lower Court decree pending Appeal.

The Lower Court decree arises from the adoption of the Award of the District Land Disputes Tribunal at Gatundu North (“the Land Tribunal”) which ordered transfer of the suit land to the First Respondent.

The Applicant here is clearly aggrieved by the decision of the Tribunal, but has taken no steps to Appeal against that decision. There is no Appeal pending before the Appeals Committee in accordance with the requirements of Section 8(1) of the Land Disputes Tribunals Act, 1990 (“the Act”) nor are there any proceedings pending in the High Court, to challenge the decision of the Tribunal. Even so, the Applicant wants to “set aside” the Lower Court decree, which was entered pursuant to Section 7 of the Act. That Section reads as follows:

“S.7 (1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the Magistrate’s Court together with any depositions or documents which have been taken or proved before the Tribunal.

(2) The Court shall enter judgment in accordance with the decision of the Tribunal and upon Judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”

The Lower Court simply performed a statutory function, and in the absence of any Appeal pending before either the Appeals Committee, or this Court (by way of Judicial Review proceedings), the Order sought by the Applicant is not available.

Accordingly, the application dated 15th January, 2007 is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 4th day of June, 2007.

ALNASHIR VISRAM

JUDGE