



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 13 of 2002

(Appeal from the award of Land Disputes Committee sitting at Kiambu in case: Kiambu Land/16/20/89 in relation of land parcel No. Kiamba/Waguthu/1578 and Read on the 22nd November 2001 in Land Case 38 of 1998)

PETER NJOROGE PLAINTIFF

VERSUS

GEOFFREY KOMU MUNGAI DEFENDANT

RULING

1: BACKGROUND

1. This was an appeal against the decision of the lower court granting $\frac{1}{4}$ of the land in question to the respondents/claimant.
2. By a very brief judgment on this appeal on 20.11.03, Ransely J allowed the appeal on grounds that the award on land by the appeals tribunal had exceeded the powers of that committee.
3. The other party proceeded to execution regardless of these orders.
4. On the 8.6.05 the claimant/respondent having come aware of the judgment order of 20.11.03 filed the notice of motion application of 8 June 2005, seeking several orders being:-
 - i) Stay of execution of the exparte order (actually judgment) of 20.1.03 and all consequential orders
 - ii) That E.N. Njue and Co be allowed to come on record
 - iii) That the court review or set aside orders of 20.11.03.

II: Finding

5. The said advocate for the appellant/respondent in the above application who currently was awarded the said judgment on appeal that allowed the quashing of the appeals Land Tribunal decision did not appear although severed on the day of hearing (though now disputed).
6. Tribunal was represented by M/s Gatutu Waigo & Co. Advocates. A new advocate wishes to come

on record and attempts to do so through the application of 20.11.03.

7. The said application of 8.6.05 is defective in form and substance. Under order 3 r 9a Civil Procedure Rules the applicant must first seek leave of come on record in place of the former advocate where the suit has a finalized judgment or order. This application must be separate and should have been first heard before any other application is heard.

8. The advocate has combined prayers which he seeks, including a stay of execution and review of a judgment. In a stay of execution, it does not arise in this matter. It was the applicant who was dividing the land and has stay against him through the judgment. As to the issue of review there is nothing demonstrated by the applicant that arises any new matters to warrant a review. No mistakes has been demonstrated.

9. The application of 8 June 2005 is incompetent and is hereby struck out by this court.

10. The decision by way of judgment of 20.11.03 stands, namely that the appeals Tribunal Land Board had no jurisdiction to determine the issue of title.

As the respondents is now before the court, there will be an award as to costs to him.

Dated this 23rd day of May 2006 at Nairobi.

M.A. Ang'awa

Judge

E.N. Njue & Co. Advocates for the appellant

Gachoka & Co. Advocates for the respondent