



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

Misc Appli 74 of 2006

M'NKANATA M'KIRIGIA.....APPLICANT

V E R S U S

GEOFFREY WERU KIRIMANIA.....RESPONDENT

R U L I N G

1. The Applicant herein was the Plaintiff in CMCC 704/2003 (Meru). In that suit he was claiming damages for obstruction and special damages of Ksh.16,752.75 being the value of crops allegedly damaged by the Defendant. The case centred around these actions of the Defendant as averred in the Plaintiff; that on 17.6.2003 the Defendant dug a trench across the Plaintiff's land and damaged crops as he did so.
2. The Defendant in his Defence filed on 2.10.2003 denied the allegations in the Plaintiff and on 15.6.2005 raised an objection to the hearing of the suit by the subordinate court on the grounds that the dispute was one of trespass and should have been heard by a Land Disputes Tribunal under s. 3(1) of the Land Disputes Tribunals Act No. 18 of 1990. The learned Magistrate (Mrs. Khadambi SRM) agreed with him and on 22.3.2006 struck out the suit for want of jurisdiction.
3. The Applicant now wants leave to appeal out of time as proceedings were supplied to him late and he was unable to file his Appeal within the prescribed period.
4. One of the ground raised in opposition to the Application is that the suit in the subordinate court was bad and an Appeal cannot cure it.
5. For me, there is no reason whatsoever for the Applicant to seek to appeal and whether or not he delayed in doing so cannot in the circumstances of this case, be a matter for consideration. I am not yet seized of the Appeal but where a party in the face of clear law wants to prolong litigation unnecessarily, then the right to appeal can be curtailed because his conduct amounts to an abuse of court process. Further, the right to be heard has not been curtailed because the Applicant is being told to go to the right forum vis the Land Disputes Tribunal and thereafter follow the channels of appeal from there. I am saying all this because the dispute between the parties is one of trespass to land and s.3(1) of the Act aforesaid clothes the Tribunals with jurisdiction to determine those matters. The plea for special damages for crop damaged during the alleged trespass is only determinable once trespass is proved and the place to do so is the Tribunal.
6. I would otherwise have allowed the Application but where the Appeal will ultimately go nowhere, then the orders should not be granted in vain and merely add one more Appeal to an already over-loaded appeal system of this court.

7. In the event, I shall for the above reasons, dismiss the application dated 11.5.2006 with costs thereof to the Respondent.

8. Orders accordingly

DATED SIGNED AND DELIVERED THIS 27TH DAY OF SEPTEMBER 2006.

ISAAC LENAOLA

JUDGE

In the presence of

Mr. Mburugu Advocate for the Applicant

Mr. Mokuu holding brief for Mr Anampiu Advocate for the Respondent

ISAAC LENAOLA

JUDGE