



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO 394 OF 2002**

**KIBUI MUTUNGU HANNIEL ..... APPELLANT**

**VERSUS**

**RUTH NJERI GITHINJI ..... RESPONDENT**

**JUDGMENT**

(An appeal from the Ruling and Order of Hon. R. N. Muriuki, RM  
in Kangema L.D.T. Suit No. 52 of 2001 delivered on 17th July, 2002).

The parties to this litigation had referred their land dispute to the Mathioya Land Disputes Tribunal, which heard and determined the same by an Award published on the 16th November, 2001. It would appear that there was no appeal preferred against that Award, and the Appellant had the same entered as a Judgment of the Court on 17th April, 2002.

By an application dated 29th April, 2002, the Respondent applied to the lower court to stay execution of that Judgment pending appeal. After hearing both the parties, the lower court, by its Ruling dated 17th July, 2002 granted stay of execution. It is against that Ruling that the Appellant has preferred an appeal to this Court, based on the following 5 grounds outlined in the Memorandum of Appeal.

- 1. Considering and basing her decision and ruling on irrelevant matters***
- 2. Failing to observe and/or hold that the Defendant/Applicant had no appeal with a probability of success***
- 3. Failing to address and/or apply the facts before her and the law, properly or at all***
- 4. Holding that she could not address herself to the merits of Civil Appeal No 70 of 2002 at the High Court of Kenya at Nyeri***
- 5. Allowing the application for stay before her.***

Mr Gachichio, Counsel for the Appellant, submitted that the lower court erred in granting stay of execution to the Respondent for the following reasons:

1. that when stay of execution was granted there was no valid appeal pending; and

2. an appeal from the decision of the Land Disputes Tribunal lay to the Land Disputes Appeals Committee, not to the Court, and that no such appeal had been preferred.

On his part, Dr Khaminwa, Counsel for the Respondent, argued that the lower court was satisfied that a valid appeal had been filed before the Nyeri High Court, and exercised its discretion correctly in granting stay of execution.

Having examined the Record of the proceedings of the lower court, both from its original file, and from the Record compiled by the Appellant, I am satisfied that there was no valid appeal to the High Court in existence when the stay order was made by the lower court. What there is on page 40 of the Record is an undated "Draft Memorandum of Appeal" filed at the law courts in Kangema on 30th April, 2002. This document does not, and cannot, constitute an appeal to the High Court.

As there was no valid appeal pending before the High Court, it was irregular for the lower court to grant stay pending appeal. On that ground alone this appeal must succeed.

However, Counsel for the Appellant also submitted that an appeal from the Land Disputes Tribunal should first be made to Land Disputes Appeals Committee, and that no such appeal had been preferred. He is right in that submission. Section 8 of the Land Disputes Tribunals Act 1990 (Act No 18 of 1990) provides for the procedure of appeal from a decision of the Land Disputes Tribunal established under Section 4 of that Act. Section 8 (9) of the Act provides that there is no direct appeal to this court from a decision of that Tribunal. Before one can appeal to this court, he is required by Section 8 (1) to appeal to the Land Disputes Appeals Committee established under Section 9 (1) of the Act for the province in which the land is the subject matter of the dispute is situated. An appeal to this court can only be from the decision of such an Appeals Committee.

Accordingly, and for reasons stated, this appeal is allowed with costs both at this Court, and in the lower court.

Dated and delivered at Nairobi this 18th day of January, 2005.

**ALNASHIR VISRAM**  
**JUDGE**