

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
MISC. APPLICATION NO. 1 OF 2005

FAITH KAGURE MUTURI APPLICANT
VERSUS
1. THE CHAIRMAN MWEA DIVISIONAL)
LAND DISPUTES TRIBUNALRESPONDENTS
2. JUDITH WAWIRA MWAI

RULING

1. The Applicant, Faith Kagure Muturi seeks leave under Order LIII Rule 1 of the Civil Procedure Rules to apply for an Order of Certiorari to quash a decision made on 9.12.2004 by the Mwea Land Disputes Tribunal in its case No. D/26D Vol. 4/262 in respect of Rice Holding No. 2335 Thiba Section.
2. I have looked at the Supporting Affidavit and I notice that the Applicant is a licensee of the Rice Holding aforesaid and it comprises 4 acres. The land is apparently situated within a National Irrigation Scheme and the use thereof is lawfully under the mandate given to National Irrigation Board as provided for in the Irrigation Act, Cap. 347.
3. The proceedings of the Mwea Land Disputes Tribunal show that the Tribunal approached the matter as a family dispute requiring resolution but it is unclear if the Tribunal as alleged, based its decision on a purported trust. It is also unclear if by ordering sub division of the Rice Holdings it was also ordering that the ownership thereof has been determined.
4. Because of these unclear matters, it would be fair that the Applicant be granted leave to file for an Order of Certiorari as sought at prayer 1 of the Application.
5. As regards the prayer for stay of the decision, I do not have sufficient material before me to exercise the discretion in favour of the Applicant. I have seen no loss that he may suffer if the decision is effected. The matter is one that the family has been grappling with and the 1st Respondent is a member of her family. The rightful use of the holding is unclear hence, the need to file proceedings in Judicial review I am not inclined to grant that limb of the Application.
6. In the event, I shall grant prayer 1 of the Application dated 3.1.2005.
7. Costs thereof shall be in the cause.

Orders accordingly.

Read in open Court this 7th day of February 2005

I. LENAOLA

JUDGE

In the presence of;

Mr. Okwaro for Applicant

N/A for Respondent

I. LENAOLA

JUDGE