



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. APPLI. 533 OF 2004**

**ESTHER TALA CHEBIEGON.....APPLICANT**

**VERSUS**

**KIPLAGAT ARAP BIATOR.....RESPONDENT**

**RULING**

On the 13th of May 2005 this court struck out the application filed by the applicant herein whereby she had sought extension of time to appeal against the decision of the Provincial Land Disputes Tribunal to the High Court. The applicant sought the order of this court to extend the period of sixty days which was provided by **Section 8(9) of the Land Disputes Tribunal Act** to enable her to file an appeal to the High Court. This court ruled that it did not have jurisdiction to extend time as such extension of time was not envisaged by the **Land Disputes Tribunal Act**. The applicant was aggrieved by the said ruling of this court and duly filed a notice of appeal to the Court of Appeal signifying her intention to appeal against the said ruling.

By a notice of motion made under **Order L rule 1 and Order XLI Rule 4(1) of the Civil Procedure rules**, the applicant has sought stay of execution of the award of the Rift Valley Provincial Land Disputes Tribunal delivered on the 16th of March 2000 pending the hearing and determination of the intended appeal to be filed in the Court of Appeal. The application is supported by the annexed affidavit of Ester Tala Chebiegon, the applicant. The respondent filed grounds in opposition to the applicant's application. During the hearing of the application, I heard the able submissions made by Mr Ogolla, Learned Counsel for the applicant and the response thereto made by Mr Karanja, Learned Counsel for the respondent. Both Counsel referred to several decided cases in support of their submissions.

I have carefully considered the said submissions made. I have also read the pleading filed by the parties to this application. The issue, really, for the determination of this court is whether this court can grant the applicant the order of stay of execution sought. Mr Ogolla has valiantly tried to persuade me that this court should grant stay of execution to enable the status quo on the ground to be maintained pending the ventilation of the appeal filed by the applicant. On the other hand, Mr Karanja has argued that the order that this court issued on the 13th of May 2005, was an order striking out the application filed by the applicant. In his view, Mr Karanja submitted that such order cannot be stayed.

I have carefully considered the arguments made. I have also read the thirteen decided cases referred to me by the applicant. Most of the cases referred to addressed the conditions that must be satisfied for stay of execution to be granted when a decree is sought to be executed against the applicant. In the instant case this court struck out the application filed by the applicant to be granted extension of time to appeal to the High Court from the Award of the Rift Valley Land Disputes Tribunal. Mr Ogolla concedes that no decree emanated from the said striking out of the applicant's application. Neither did this court give any substantive orders that declared the proprietary rights of the applicant vis a vis the respondent.

Having struck out the application by the applicant to extend time, this court cannot grant orders staying the giving of effect to the Award made by the Rift Valley Provincial Land Disputes Tribunal. I agree with the rulings of my brother judges made in **Nakuru HCCC No. 244 of 2004 Loice Wangari Njuguna & two others –versus- Afraha Educational Development Company Ltd & Anor (unreported) and Nairobi HCCC No. 304 of 2004 Bunsun Travel Services Ltd & Anor versus Kenya Airways Ltd**

(*unreported*) where it was held that once a suit (or in this case an application) has been struck out, the court ceases to have jurisdiction to grant any orders subsequent thereto. The court becomes *functus officio*. If this court were to grant the order sought by the applicant, it would in effect be granting an order without any legal substratum. It would result in a travesty of justice.

I am not persuaded that the application filed by the applicant has any basis in law. In my view, the application was filed by the applicant in the forlorn but misguided hope that this court may sympathise with her position and give the stay order in utter disregard of known law. That cannot be. If the applicant felt aggrieved by the orders of this court, she is at liberty to seek the said orders from the Court of Appeal. This court has discharged its legal mandate. It cannot revisit the issues raised by the applicant in this application. The application lacks merit and the same is dismissed with costs to the respondent.

**DATED at NAKURU this 30th day of June 2005.**

**L. KIMARU**

**JUDGE**