



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Misc Appli 24 of 2005

IN THE MATTER OF AN APPLICATION BY CHARLES MUGUNDA

GACHERU FOR AN ORDER OF CERTIORARI

AND

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT
NO. 18 OF 1990**

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM AT
CHAPTER 26 LAWS OF KENYA**

AND

IN THE MATTER OF LAND PARCEL NO. NYERI/WATUKA/577

CHARLES MUGUNDA GACHERU.....APPLICANT

Versus

THE SENIOR RESIDENT MAGISTRATE

PRINCIPAL MAGISTRATE'S COURT, NYERI.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

MAINA GACHERU.....INTERESTED PARTY

RULING

Exparte Chamber Summons dated 16th March 2005 under Sections 8 and 9 of the Law Reform Act Cap. 26 and Order LIII Rules 1 (1), (2) and 4 of the Civil Procedure Rules praying for leave to apply for an order of Certiorari to call into this court and quash:

“(a) The order made on 27th February 2005 by the Senior Resident Magistrate Nyeri in Chief Magistrate’s Court Nyeri Award No. 19 of 1999 Maina Gacheru versus Charles

Mugunda Gacheru adopting the award of Provincial Land Disputes Appeals Tribunal (Committee), Central Province in case No. 57/98 Maina Gacheru versus Charles Mugunda Gacheru as judgment of the court.

(a) That the leave do operate as a stay of execution of the order by the Senior Resident Magistrate in Chief Magistrate's Court Nyeri Award No. 19 of 1999 Maina Gacheru versus Charles Mugunda Gacheru pending further proceedings and orders of this court."

The Applicant has now brought a recent certified copy of the land register for parcel of land **NYERI/WATUKA/577** as directed by court

Having carefully considered what has been brought to my attention during the hearing of the said Chamber Summons in the light of pleadings filed, the Chamber Summons is hereby dismissed for the following reasons:

The parties are abusing the process of the court in that:

(a) Maina Gacheru having filed in this court H.C.C.C. No. 180(B) of 1997 against Charles Mugunda Gacheru claiming ownership of a portion for parcel of land Reg. No. NYERI/WATUKA/577; and

(b) The parties having by consent obtained a consent court order on 24th July, 1997 referring that suit "to Land Disputes Tribunal Nyeri for arbitration";

(c) The parties instead of returning to H.C.C.C. No. 180(B) of 1997 with the arbitration award from the Land Disputes Tribunal Nyeri or from the Provincial Land Disputes Appeals Tribunal (Committee) Central Province, went to the Chief Magistrate's Court at Nyeri and filed a fresh case being Award No. 19 of 1999 and proceeded to obtain that court's order made on 27th February 2005 without disclosing the existence of H.C.C.C. No. 180(B) of 1997.

(d) As if that was not enough, the parties have now moved from the Chief Magistrate's Court, Nyeri, and are back in this court in this new case H.C. **Misc. APPLICATION NO. 24 of 2005** furiously fighting each other without disclosing the existence, pendency and connection of H.C.C.C. No. 180(B) of 1997.

I had to carry out my own research, following lingering questions in my mind, to discover that the parties had H.C.C.C. No. 180(B) of 1997 pending in this court concerning the same dispute over the same suit parcel of land between them pending in this court and that that is the first case among their cases that have so far come to my notice in these proceedings.

From what I have said above, each party to bear its own costs of this H.C. Misc. Appl. No. 24 of 2005.

Dated this 6th day of June, 2005.

J. M. KHAMONI

JUDGE