



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
CIVIL APPEAL NO. 60 OF 2003

MATUNDA MENZE..... APPLICANT

VERSUS

BETH MATUNDA RESPONDENT

RULING

The application dated 22/9/03 is brought pursuant to Order 21 Rule 22, Order 39 Rule 1, 2 & 3, Order 50 Rule 7 of the Civil Procedure Rules and Section 3 A Civil Procedure Act. The applicant Matunda Menze seeks orders of stay of execution of the Judgement /decision of the Land Disputes Tribunal Case No. 134/01 at the Provincial Appeals Committee, Embu and secondly that an order of injunction do issue restraining the Respondent, Beth Matunda from committing acts of waste alienating or entering or interfering with the applicant's peaceful occupation of land parcel No. Kalama/Kyangala/1355 and Kalama/Kyangala/1686 until the application is heard and the appeal No. 60/03 is heard and determined.

The grounds upon which the application is brought is found on the face of the application and also supported by the affidavit of applicant Matunda Menze.

The applicant contents that he is the registered owner of the suit land and that the Respondent filed a case No. 16/00 before the Machakos Disputes Tribunal seeking that the two parcels of land be divided equally between them and judgement was given in her favour.

Being dissatisfied with the decision of the Land Disputes Tribunal he appealed to the Provincial Disputes Tribunal Committee at Embu which confirmed the decision of the Land Disputes Tribunal, Machakos. The Appeals Tribunal's decision was made judgement of Court on 6/6/03 and being dissatisfied with the said decision, he filed an appeal No. 60/03 which is still pending before court. That on 2/11/02 he had been served with a letter from the District Officer intending to have the parcels of land subdivided on 15/11/02. He is apprehensive that if the said subdivision is done the appeal will be rendered nugatory. He seeks the orders sought.

A replying affidavit was filed by Beth Matunda opposing the application. The Respondent claims to be the widow of the applicant's deceased brother and that the land was held by the applicant in trust but that the applicant has refused to have the share transferred to her. She filed a case with the tribunal which gave her share to him and the appeals committee ruled in her favour. It is her contention that the Appeals Committee having given the decision on 31/7/02, the appeal was filed out of time on 24/7/03 and there is now a valid decree on record and that this application lacks merit and no prima facie case has been made out to warrant the grant of the orders sought. She also depones that the applicant is using these proceedings to delay the judgment because he has sold some of the land to one Mutisya Kyundi.

The question which was raised by the Respondent is whether there is no appeal on record for being time

barred is crucial because before an order of injunction is granted the applicant has to show a prima facie case with good chances of success.

The Appeals Committee made its decision on 31/7/02. It is said to have been made a judgement of the court on 6/6/03. This appeal was filed on 24/7/03. Section 8 (8) of the Land Disputes Tribunal's Act provides as follows:

“ The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie there from to any court.

Section 8 (9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within 60 days from the date of the decision complained of.”

There is no provision in the Land Disputes Tribunal's Act, that the decision of the appeals committee shall be made a judgement of the court as is the case with a decision of the tribunal under Section 7 (1) and (2) of the Land Disputes Tribunal.

The decision of the Appeals Committee was made on 31/7/02 and the right of appeal was available to the applicants 60 days from that date. Section 8 (9) of the Land Disputes Tribunal Act refers to the decision' of the Appeals Committee not a judgment of the court. The 60 days period did not start to ran from 6/6/03 when the Appeals Committee was allegedly made judgement of the court. I do uphold the Respondent's submission that the appeal filed herein is time barred and there is no proper appeal on record upon which this application and orders sought can be made.

It follows that the applicant has not established a prima facie case with food chances of success and there is really no appeal on record. For the above reason, the application lacks merit and it is hereby dismissed with costs.

Dated, read and delivered at Machakos this 12th day of October 2004.

Read and delivered in the

Presence of

R.V. WENDOH

JUDGE