



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC APPLICATIN 840 OF 2001**

LAWRENCE NDUATI.....PLAINTIFF

VERSUS

NANCY CHEPNGENO BORE.....DEFENDANT

RULING

This is miscellaneous application is brought by way of chamber summons.

The chamber summons is brought under order XXXIX Rule 1 (a) 2, 2(a) AND Section 3A of the CP Act. The applicant prays for two main orders namely;

1. There be a stay of execution of the orders emanating from the decision of the land Dispute Tribunal suit no. 5 of 2001 and subsequently adopted by court.
2. That the status quo be maintained till the appeal is heard and determined.

The application is supported by the affidavit of the applicant. It is apparent that the dispute between the parties was the subject matter of Kajiado district Land Disputes Tribunal are no 5 of 2001. The applicant lost in that application. The award of the Tribunal was filed in the Resident Magistrates Court – vide application No. 12/2001 and on 27.1.2001 the court entered judgment in terms of the award.

On 4.7.2001 the RMs court Kajiado stayed the ordered of 27.6.2001 for 14 days and gave applicant leave to appeal out of time against the decision of the Tribunal to the Provincial Land Disputes Tribunal on 19.7.2001, the Resident Magistrates court at Kajiado rejected the applicants application for order of stay of execution of the orders of 27.6.2001 pending appeal to the Provincial Land Disputes Tribunal Applicant says that he lodged an Appeal to the Provincial Land Disputes Tribunal.

By the present application, applicant seeks a stay of execution of the orders pending the determination of the appeal to the Provincial Land Dispute Tribunal

The Kajiado District Land Disputes Tribunal ordered the District Land Registrar and the District surveyor to go to the applicants land and open up the road of access to respondents land using the survey maps.

This is not an Appeal from the decision of the RM's Court Kajiado. If it was such an appeal then the application would have been made under Order XLI Rule 4(1) Civil Procedure Rules and the High Court would have had jurisdiction to grant a stay of execution of the decision of the Resident Magistrates court pending the determination of the Appeal.

Order XXXIX under which the present application is brought deal with temporary injunction in a pending suit. It is plainly clear from order XXXIX that the application for temporary injunction are made

a pending suit. It is the law that an order of temporary injunction can only be made in a pending suit.

Secondly the orders sought in the application that stay of execution and maintenance of status quo are not provided for in order XXXIX Civil Procedure Rules.

Clearly this application is grossly incompetent and I agree with the respondent as she states in her replying affidavit that this court does not have jurisdiction to grant the orders sought.

I think that the correct cause would have been to file an appeal against the orders of Resident Magistrates Court Kajiado given on 19.7.2001 and on the basis of the appeal seek an order for stay of execution of the orders of the Resident magistrates court.

For the above reasons, the application is dismissed with costs to the Respondent

E. M. Githinji

Judge

26.6.2002

Mr. Kiptoo present

Mr. Katwa absent

Respondent present