



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC.APPL NO. 47 OF 2013

JOHN KABERIA M'LAIBUNI.....APPLICANT

VERSUS

NTAWA KABARWA.....RESPONDENT

RULING

1. This application, stated to have been brought to Court Under Section 79a of the Civil Procedure Act and Order 50 Rule 5 of the Civil Procedure Rules, is dated 30/05/2013 and prays for the following Orders:-

1. ***THAT this Honourable Court be pleased to grant leave to the Applicant to file Appeal out of time.***
2. ***THAT this Honourable Court be pleased to order the annexed Memorandum of Appeal as duly filed***
3. ***THAT the costs of this Application be provided.***

2.The Application is supported by the Affidavit of JOHN KABERIA M'LAIBUNI, the applicant, and has the following grounds:

- a. ***THAT the Ruling was read on 8th day of August, 2012 and same applied orally in Court on the same day.***
- b. ***THAT the Ruling was not supplied until 23rd October, 2012.***
- c. ***THAT the delay herein is not inordinate and the same is excusable under the circumstances.***
- d. ***THAT no prejudice will be suffered if the Application herein is granted.***

3. The applicant tells the Court that the subject matter of this application is the ownership of Parcel No. NJIA/KIEGOI/395 registered Under the Registered Land Act. He contends that the proceedings before the Land Disputes Tribunal were null and void *ab initio*.

4. The Applicant says that he had filed Succession Cause No 10 of 1998 at Maua, which suit was heard and finalized and as a result he became owner of Parcel No. NJIA/KIEGOI/1308 upon transmission.

5. The Applicant tells the Court that it is at liberty to refer to the decision in Beatrice M'Marete Versus Republic and 3 others, Civil Appeal No. 259 of 2000 (CA) where it was held that in view of section 3 of the Land Disputes Tribunals Act, the Court had no Jurisdiction to determine matters relating to ownership of land.

6. The Appellant refers this Court to the decision in Meru HCCC 76 of 2008, Florence Muthoni Stanley Versus Samuel Mugambi, in which the Court held that in view of Section 3 of the Land Disputes Tribunals Act, the Tribunal had no Jurisdiction to determine ownership of the land and set aside the decision of the Land Disputes Tribunal.

7. The Appellant says that in view of his above Submissions, the Lower Court erred in failing to set aside the decision of the Land Disputes Tribunal Award in LDT NO 16 of 2007 at Maua.

8. The Applicant submits that in view of the irregularities he has elaborated, and the fact that the subject matter is land, he should be given an opportunity to be heard. He also says that his intended appeal has an overwhelming chance of success.

9. The Respondent opposes the Application. He says that the Application is not signed as required Under Order 2 Rule 16 of the Civil Procedure Rules. He submits that on that ground the application should be dismissed.

I dismiss this submission offhand as the copy in the Court file is signed.

10. The Respondent says that the reason given by the Applicant, for him to be allowed to file an Appeal out of time, is that the Ruling was read on 8th August, 2012 but was not supplied to the Applicant until 23rd October, 2013. The Respondent says that there is no evidence that the apposite proceedings were applied for in time and supplied late. The Respondent poses the Question. "In any case, if the proceedings were supplied on 23rd October, 2012, what was the Applicant doing upto 28th June, 2013 when the application was filed. He tells the Court that more than 10 months of delay were not accounted for.

11. The Respondent submits that for the Applicant to succeed in an application of this nature, he must satisfy the Court that there was sufficient cause that prevented him from filing the Appeal within the stipulated 30 days.

12. The Respondent submits that there is no Certificate of Delay to show the Court that the Proceedings and the Ruling were supplied late. He adduced Civil Appeal No. 66 of 2010 (CA), Gerald M'Limbine Versus Joseph Kangangi where the Court held that the Applicant has a duty to show sufficient cause for not filing the Appeal within the stipulated time of 30 days.

13. The Respondent says that it is not necessary to address the issues of whether the Applicant has a good appeal or not. He says: "In fact, he has no right of Appeal.

14. The Respondent says that the appeals and decisions relied on by the Applicant were from the Eastern Province Appeals Committee and not from a Subordinate Court. He prays that the Application be dismissed with Costs.

15. I have carefully examined the pleadings and the submissions proffered by the parties.

The Section that deals with leave to appeal out of time is Section 79G of the Civil Procedure Act.

It Says;

" 79G. Every Appeal from a Subordinate Court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against , excluding from such period any time which the lower Court may certify as having been requisite for the preparation and delivery to the Appellant a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the Court that he had good and sufficient cause for not filing the appeal in time".

16. The authorities proffered by the Applicant are good law in proper Circumstances and contexts. They deal with the issue of Jurisdiction of Land Disputes Tribunals. The Applicant addresses this issue as if he is arguing his appeal. This should not be the case. He should be trying to satisfy the Court that he had good and sufficient cause for not filing the appeal in time. This he has not even attempted to do. I declare the authorities proffered by the Applicant and his submissions irrelevant.

17. I find the Respondent's submissions full of merit. The Applicant has not explained the delay covering the period from 23rd October, 2012 to 28th June, 2013 when he filed this Application. He has also not provided a Certificate of Delay.

18. As I have already pointed out, he has not in his submissions made any attempt to satisfy the Court that he had good and sufficient cause for filling an appeal out of time. In the Circumstances, I find that the Applicant has not satisfied this Court that he had good and sufficient cause for not filing an appeal out of time. **I, therefore, dismiss this application.**

Costs are awarded to the Respondent.

It is so ordered.

Delivered in Open Court at Meru this 28th day of July, 2015 in the presence of:-

Cc:

P.M.NJOROGÉ

JUDGE