



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
ENVIRONMENT AND LAND COURT
MISCELLANEOUS APPLICATION NO. 72 OF 2013

NYAGA JOHANA NJAKWIGUAAPPLICANT

VERSUS

AUGUSTINE NJERU NJUGUNARESPONDENT

RULING

The proposed appellant filed this Notice of Motion under **Section 79 G and 95 of the Civil Procedure Act** and **Orders 50 and 51 of the Civil Procedure Rules** seeking the following orders:-

1. – *Spent*
2. *That the proposed appellant be granted leave to file appeal out of time against the whole of the decision by the Embu District Land Tribunal delivered on 17th September 2010 at Embu*
3. *That this Honourable Court be pleased to issue a temporary injunction restraining the defendant/respondent whether acting by themselves, their agents, officers, employees, dealers, assigns, licensees, servants and/or anybody acting on their behalf from further intermeddling, sub-dividing, selling, disposing, alienating, transferring and/or in any other manner whatsoever adversely dealing with L.R NO. KAGAARI/WERU/3192 pending the hearing and determination of this application*
4. *That the memorandum of appeal annexed hereto be deemed as duly filed and served*
5. *That costs of this application be provided for*

The application is based on the grounds indicated on the face of it and also supported by the applicant's affidavit in which he depones, inter alia, that a verdict was reached by the Land Disputes Tribunal sitting in Embu which purported to share out his land but he was not aware about the implications of the award until the respondents went to evict him having demarcated the land. He is therefore aggrieved by that award and since time to appeal has elapsed, he seeks this Court's indulgence to enlarge time. Among the grounds put forth in his application include that the applicant is an illiterate man who did not understand the procedure and process of the Tribunal which in any event exceeded its jurisdiction in determining an issue of ownership to registered land and the land subject matter of this dispute is the family land.

The application was opposed and in his replying affidavit, the respondent deponed, inter alia, that the applicant understood the proceedings of the Tribunal and even voluntarily offered to compensate him with one acre in exchange of some money Ksh. 8,500/= made up of a goat, honey, overcoat and transport and the award was infact based on the parties agreement and the proceedings were conducted in a language which the applicant understood and he was informed of his right of appeal. Further, the respondent depones that this application cannot be allowed as the delay is inordinate.

Submissions have been filed by both parties counsels and I have considered them together with the rival affidavits.

From the pleadings herein, it is not in doubt that the Land Disputes Tribunal exceeded its jurisdiction in determining a dispute over registered land which was not part of its mandate under **Section 3 of the now repealed Land Disputes Tribunal Act**. However, this Court is not hearing the appeal now. What is before me is an application to grant leave to appeal out of time. The power to do so is donated by **Section 79 G of the Civil Procedure Act** and which the applicant relies upon. That provision states as follows:-

“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 of 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 a good and sufficient cause for not filing the appeal in time

The key words in the above provision are “***a good and sufficient cause for not filing the appeal in time***”. Therefore, while the Court has the power to admit an appeal out of time, it must be for “***a good and sufficient cause***”. Looking at this application, what “***good and sufficient cause***” has the applicant provided to enable me exercise my powers in his favour?

Looking at the applicant’s supporting affidavit and the grounds upon which this application is based, I see no such “***good and sufficient cause***” to justify this Court granting the orders sought. Firstly, the decision of the Embu District Land Disputes Tribunal which he seeks to appeal against was delivered on 17th September 2010. That is over three (3) years ago. He does not explain why it took him that long to file this application or why he did not appeal to the then Appeals Committee within 30 days of the Tribunal’s award. In his affidavit, he depones that he only came to learn about the implications of the award when the respondents stated sub-dividing the land. But he does not say when this was. A period of three (3) years clearly amounts to in-ordinate delay. The applicant has not demonstrated proper diligence of one who really wanted to appeal but could not do so for good reasons.

Secondly, apart from the un-explained delay, the applicant has really not given me “***good and sufficient cause***” to warrant this Court’s indulgence. He says he is an old illiterate man who did not understand the Tribunal’s procedure and process. The proceedings of the Tribunal show that the applicant addressed it and in fact made a demand of Ksh. 8,500/= from the respondent made up as follows as a condition for compensating the respondent with one (1) acre of land i.e. :

1. Ksh. 5,000/= - he goat
2. Ksh. 1,000/= - tin of honey
3. Ksh. 500/= - over-coat
4. Ksh. 2,000/= - transport and accommodation.

Indeed the proceedings indicate that the Tribunal’s award was based on the parties own agreement. It cannot therefore be true, as the applicant now claims, that he did not understand what he was getting into. It is obvious to me that he has only come to Court after realizing the enormity of his decision made three (3) years ago. I do not think that was the type of litigant that **Section**

79 G of the Civil Procedure Act was meant to protect. It is instructive to note that he does not deny receiving the goat, honey and over-coat which was part of the bargain between him and the respondent. In his application, he argues that “***it is in the interest of justice, good governance and up-holding the rule of law***” that he be granted leave to challenge the decision of the Tribunal. I am constrained to remind him that having eaten the goat, honey and put on the over-coat, it is also in the interest of equity that he should meet his part of the deal.

Having said so and notwithstanding what I have said about the Tribunal's jurisdiction, I am not satisfied that the applicant has shown "***good and sufficient cause for not filing the appeal in time***" as required under **Section**

79 G of the Civil Procedure Act. The delay has been inordinate and un-explained. Consequently, the Notice of Motion dated and filed herein on 12th August 2013 is dismissed with costs.

B.N. OLAO

JUDGE

22ND OCTOBER, 2013

22/10/2013

Coram

B.N. Olao – Judge

CC – Muriithi

Applicant – present

Respondent – present

COURT: Ruling delivered this 22nd day of October 2013 in open Court in presence of both parties.

B.N. OLAO

JUDGE

22ND OCTOBER, 2013