



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CIVIL APPEAL NO. 37 OF 2010

ISAAC GATHUNGU

WANJOHI.....APPELLANT

VERSUS

NORMAN CHEGE WANYANGA & 3

OTHERS.....RESPONDENTS

RULING

The Appellant herein lodged this appeal by **memorandum of appeal dated 29th March and filed on 13th April 2010**. The appeal is against the decision of the Rift Valley Provincial Land Disputes Appeals Committee **dated 2nd February 2010**.

The Appellant had already come to court by **notice of motion, also dated but filed on 29th March 2010**. The application sought certification, as required by the **proviso to section 8(9) of the Land Disputes Tribunals Act, No.18 of 1990**, that the appeal involves an issue or issues of law (other than customary law). I cannot understand how this application came to be filed before the memorandum of appeal which, as already noted, was filed on 13th April 2010.

The application also sought stay of execution of the decision appealed against pending determination of the appeal.

On 14th April 2010 an interim stay of execution was granted ex parte. The same was extended, again ex parte, on 11th October 2010.

The Respondents have taken exception to the granting and extension of the interim stay. This exception was by **notice of motion dated 19th October 2010** which sought an order for review and setting aside of the stay. That application was heard together with the notice of motion dated 29th March 2010.

I have considered the submissions of the learned counsels appearing.

The main point taken by the Respondents is that there is no competent appeal before the court upon which an order for stay of execution could properly be issued. Learned counsel for the Respondents, Mr Kaai, pointed out that the decision of the Appeals Committee appealed against was delivered on 2nd February 2010. Under section 8(9) aforesaid of Act No. 18 of 1990, an appeal lies to the High Court from the decision of an Appeals Committee on a point of law within sixty days from the date of the decision. Mr Kaai, therefore reckoned, correctly in my view, that the appeal herein should have been lodged on or before the 4th April 2010. As already seen, the appeal was lodged on 13th April 2010, some nine days out of time. Act No. 18 of 1990 does not donate to court any power to extend the time limited by section 8(9) aforesaid.

Miss Chelagat, learned counsel for the Appellant, really had no answer to this submission by Mr Kaai, except to say that the issues raised should be raised at the time of hearing of the appeal, and that in any event the interim stay of execution was granted in exercise of the discretionary power of the court. The learned counsel also submitted, rather lamely with due respect, that Sundays and public holidays ought to have been excluded in computing time. She cited no law or authority to support this proposition.

I am satisfied that the appeal herein was filed out of the time stipulated by section 8(9) of Act No. 18 of 1990. There is also no power donated to this court to extend time for filing the appeal. There is no competent appeal before this court. The appeal is hereby struck out with costs to the Respondents. Needless to say, the interim stay of execution now in place is hereby set aside. It is so ordered.

DATED AT MACHAKOS THIS 25TH DAY OF JANUARY 2011

H.P.G. WAWERU

JUDGE

DELIVERED THIS 28TH OF JANUARY 2011