



## **CIVIL APPEAL**

- **Consideration of High Court's supervisory powers over subordinate courts as provided under Article 165 of the Constitution.**
- **The Land Dispute Tribunal Act does not provide the format of appealing to the Appeal Committee. See Rule 5 (1) in that Act.**

## **REPUBLIC OF KENYA**

### **IN THE HIGH COURT OF KENYA**

#### **AT MERU**

#### **HIGH COURT CIVIL APPEAL NO. 100 OF 2002**

**MUKIRI M'MBUI .....APPELLANT**

**VERSUS**

**RINGERA MUKIIRA.....1<sup>ST</sup> RESPONDENT**

**SIMON KIAMBI .....2<sup>ND</sup> RESPONDENT**

***(An appeal against the award/decision of the Eastern Provincial Land Dispute Tribunal Case No. 67 of 1999 delivered on 5<sup>th</sup> April 2002)***

#### **JUDGMENT**

The appellant filed a dispute before the land Dispute Tribunal Meru Central against the respondents. The decision of the said tribunal dated 6<sup>th</sup> July 1999 was to the effect that the appellant should vacate the disputed land which was awarded to the 1<sup>st</sup> respondent. The appellant was aggrieved by that decision and filed an appeal before the Eastern Provincial Appeals Committee Embu. The Appeals Committee by their decision dated 5<sup>th</sup> April 2002 ruled:-

***“There was no Memorandum of Appeal from the appellant. The appeal case is hereby dismissed under section 8 paragraph (3) of the Land Tribunal Act of 1990. The panel of elders endorses the distribution of the Land Tribunal's award.”***

The appellant was dissatisfied with that decision and has filed this appeal. The appellant filed the

following grounds of appeal.

***“That The Eastern Province Land Disputes Appeals Committee acted against the Law dismissing the appellant’s appeal on the ground that there was no Memorandum of Appeal in their file as it was not the duty of the appellant to maintain and secure the Provincial Disputes Appeals Committee’s file.***

***That the Eastern Province Land Dispute’s Appeals Committee failed to appreciate that the appellant could not have filed the appeal under the Land Disputes Tribunals Act without filing a Memorandum of Appeal.***

***That summary dismissal of the appeal on the ground relied on by the Provincial Land Appeals Committee was without jurisdiction.”***

Before considering those grounds which I wish to consider together, I will deal with an issue raised by the respondent learned counsel in his written submissions. Firstly, the respondent submitted that this appeal is incompetent for having been filed beyond the sixty days provided under section 8 (9) of the Land dispute Act. That section provides:-

***“Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of.”***

The period therefore for appealing against the decision of Appeals Committee is sixty days. Although the appellant’s counsel did not respond to this issue in his submissions, in my perusal of the lower court file that is, Chief Magistrate LDT No. 43 of 1999 Meru I found that the proceedings reflected on 5<sup>th</sup> August 2002 the following:-

***“Award from the Provincial Appeals committee filed on 6.6.2002 read to the parties. R/A 60 days.”***

The proceedings of that day show that the parties were present. If that was the day that the parties became acquainted with the Appeals Committees decision, then the appeal filed on 18<sup>th</sup> September 2002 was within the sixty days period provided under the Act. The Appeals Committee proceedings dated 5<sup>th</sup> April 2002 which dismissed the appellant’s appeal strangely also indicated that the parties were present. Both the old and the present constitution provide that the High Court has supervisory jurisdiction over the subordinate courts which include Tribunals. Article 165 (6) of the present constitution provides as follows:-

***“165 (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”***

Article 165 (7) of the present constitution provides the purpose for which sub article (6) was provided. Sub article 7 provides as follows:-

***“165 (7) For the purposes of clause (6), the High Court may all for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”***

As it can be seen, the purpose of sub Article (6) is to ensure fair administration of justice. As I begin to consider the grounds of appeal, it will become clear that the Appeals committee failed to ensure fair administration of justice. The Land Dispute Tribunal Act does not provide the procedure to be followed by a party appealing against the decision of the District Land Dispute Tribunal. Rule 5 (1) of the Land Dispute Tribunals (Forms and Procedure) Rules 1993 provides as follows:-

***“An application for an appeal to an Appeals Committee in accordance with section 8 of the Act shall be in Form set out in the third schedule.”***

The third schedule provides the form which is to be filled by a party desiring to appeal before the Appeals Committee. Again, from my perusal of the file before me, I find that the appellant filled such a form which was received by the Provincial Commissioner Eastern Province Embu on 28<sup>th</sup> October 1999. The appellant in that form stated the reasons for appealing against the decision of the District Land Dispute Tribunal. He stated in that form as follows:-

***“The disputed land belongs to the first objector (1<sup>st</sup> respondent) which he gave to his son the second objector (2<sup>nd</sup> respondent) and that the claimant should move from the disputed land and move to her family land.....”***

It is clear that the appellant before the Appeals Committee filed a competent appeal as provided by the rules as stated above. The Appeals Committee’s decision to dismiss the appeal on the basis that the appellant had not filed a Memorandum of Appeal is not only unfair but also unjust and was without any legal basis. It is because of that finding that the Appeals Committee decision attracts this court’s supervision. It is for that reason that I find that even if the appellant’s appeal before this court was filed out of time, the Appeals Committee decision would still attract this court’s intervention. It therefore follows that the judgment of this court is:-

- 1. That the decision of the Eastern Provincial Appeals Committee in Appeal Case No. 67 of 1999 dated 5<sup>th</sup> August 2002 is hereby set aside.***
- 2. The appellant’s appeal will be considered afresh by a different panel of members of the Eastern Appeals Committee on a date to be set by the Appeals Committee.***
- 3. This judgment shall be served on the Chairman of the Eastern Provincial Appeals Committee for purpose of putting into effect number (2) above.***
- 4. The costs of this appeal are awarded to the appellant as against both respondents.***

**Dated, signed and delivered at Meru this 17<sup>th</sup> day of February 2011.**

**MARY KASANGO**

**JUDGE**