



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**MISC. CIVIL APPLICATION NO. 180 OF 2010**

**GILBERT MARUA**

**NJAGI.....APPLICANT**

**Versus**

**JANE MUTHONI**

**NJAGI.....RESPONDENT**

**RULING**

Gilbert Marua Njagi, the applicant herein, took out the motion dated 24<sup>th</sup> September 2010 in which he applied for leave to file an appeal out of time against the decision of the Central Province Land Disputes Appeals Committee made on 8<sup>th</sup> May 2002. The motion is premised on the provisions of section 79G of the Civil Procedure Act. The Applicant named Jane Muthoni Njagi, as the Respondent. The record indicates that the parties to this motion fixed the motion for interpartes hearing on 4<sup>th</sup> May 2011. On the aforesaid date, the Applicant was the only party who attended court, hence the motion proceeded for hearing exparte. In any case there was no evidence that the Respondent ever filed a reply to the motion.

I have considered the grounds set out on the face of the motion plus the facts deponed in the supporting affidavit. It would appear that the Respondent had filed a complaint before the Nyeri Land Disputes Tribunal claiming she was entitled to a portion measuring about 2.02 Ha. to be excised from L.R. no. Mugunda/Nairutia/Block 1/385. She was given the award as prayed. The Applicant herein was unhappy hence he challenged the decision before the Central Province Appeals Committee. The appeal was heard and dismissed on 8<sup>th</sup> May 2002. The Applicant is now before this court seeking for leave to appeal out of time against the aforesaid decision.

I have carefully considered the material placed before me and it is evident that the Applicant is blaming his erstwhile advocate for his failure to file the appeal within the stipulated time. He has deponed in his

affidavit filed in support of the motion that he had instructed the firm of Wahome Gikonyo & Co. Advocates to file an appeal but the aforesaid firm refused to act on his instructions. Annexed to the aforesaid affidavit are copies of receipts issued to him showing that he had paid a sum of Kshs, 28,000/- being fees for the filing of the appeal by 17<sup>th</sup> May 2003. It is obvious from the aforesaid annexures that the firm of Wahome Gikonyo & Co. Advocates did not file the appeal despite having been paid. It is therefore clear that the Applicant intended from the beginning to challenge the decision of the Provincial Land Disputes Appeals Committee, but was let down by his advocate. The applicant has not shown what steps he has taken to pursue his erstwhile advocate for the available remedies in law. The question which I must grapple with is whether this court has the discretion to grant the orders sought? There is no doubt that the applicant was required to file an appeal, if he was aggrieved, against the decision of the Provincial Land Disputes Appeals Committee within 60 days from the date of the decision under section 8(9) of the Land Disputes Tribunals Act No. 18 of 1990. I have perused the aforesaid Act and the Limitation of Actions Act. There is no provisions in which parliament gave this court the discretion to extend time to appeal. The period of 60 days under s. 8(9) of the Land Disputes Tribunals Act was fixed by the legislature. Parliament did not deem it fit to donate to this court the power to extend time to appeal unlike in the other matters. Section 79G of the Civil Procedure Act is only applicable to appeals emanating from the subordinate court but not in quasi judicial bodies like the Land Disputes Tribunals.

In the final analysis I have come to the conclusion that this court has no jurisdiction to grant the orders sought. The motion is ordered dismissed with no order as to costs.

Dated and delivered this 15<sup>th</sup> day of July 2011.

**J.K. SERGON**

**JUDGE**

In open court in the presence of the Applicant in person.

**J.K. SERGON**

**JUDGE**