



CIVIL

- ***High Court's supervisory power.***

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC. APPL. NO. 51 OF 2011

STEPHEN S. NTEERE INOTI APPLICANT

VERSUS

M'TWARUCHIU NTHUNGURI IKWINGA 1ST RESPONDENT

MAGIRI M'TWARUCHIU 2ND RESPONDENT

RULING

The applicant by his Notice of Motion dated 15th June 2011 seeks an order of enlargement of time to file an appeal against the Eastern Province Appeals Committees decision in Land Dispute Appeal No. 180 of 2002. The court ordered the application to be served upon the respondent for *inter partes* hearing. The respondents were served as evidence by the affidavit of service sworn by Mutwiri Arimi Advocate of 1st July 2011. The respondent did not attend the hearing of the application nor did they file any documents in opposition. The applicant alleges that he is the registered owner of parcel number *Ntima/Igoki/857* which was subject of the appeal before the Eastern Appeals Committee. That Appeals Committee by its letter dated 30th December 2008 forwarded its award to the Chief Magistrate's Court at Meru. From the proceedings of CMC Meru LDT No. 36 of 2002, it is seen that the award was read in the presence of the two respondents but in the absence of the present applicant. The applicant stated that being unaware of the award reading, he did not file an appeal against the decision within the specified period. Section 8 (9) of the Land Dispute Tribunal Act provides the period within which such appeal should be filed in the High Court. That section provides as follows:-

“Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved.”

The Land Dispute Tribunal Act does not provide for the extension of the 60 days period provided in that section. But I dare say the hands of the court are not tied by lack of such a provision. In this regard, I will refer to a case of this court decision which is relevant to this case. The case is **Mukiri M'Mbui vs. Ringera Mukiira & Ano.** High Court Civil Appeal No. 100 of 2002 where it was stated:-

“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 call 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.”

In that quoted case, the court dealt with an appeal to this court against the decision of the Appeals Committee. The appellant however had filed that appeal outside the 60 days’ period provided by the above section. It will be seen from that decision that this court has supervisory powers over the subordinate court. As stated before, the chief magistrate’s court proceedings show that the applicant was absent when the award was read. The applicant being unaware of the reading of that award could not have known that the time for filing an appeal had begun to run. It was in error for the said court to have read the award without ensuring that the applicant had been informed of such reading. It is because of that failure by that court that this court will be moved to use its supervisory powers as stated above. I grant the following orders:-

1. This court does hereby enlarge time and does grant the applicant leave to appeal against the Eastern Province Appeals Committees decision in Land Dispute Appeal Case No. 180 of 2002. The applicant shall file his appeal within 30 days from this date hereof.

2. The costs of the Notice of Motion dated 15th June 2011 shall abide with the outcome of such an appeal to be filed by the applicant.

Dated, signed and delivered at Meru this 10th day of August 2011.

MARY KASANGO
JUDGE