



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

Miscellaneous Application 260 of 2009

**DUNCAN MUCHINA GACHURI
CHARLES MATHENGE GACHURI
GEORGE GITONGA GACHURI
JULIUS GACHARA GACHURIAPPLICANTS**

Versus

**DADSON MACHARIA GACHURI
LEONARD MATHENGE GACHURI
PETER KIO GACHURIRESPONDENTS**

RULING

Pursuant to the provisions of Order L rule 3 of the Civil Procedure Rules, the applicants herein, namely: Duncan Muchina Gachuri, Charles Mathenge Gachuri, George Gitonga Gachuri and Julius Gachara Gachuri applied for leave to appeal out of time against the decision of the Central province Land Disputes Appeals Committee made on 19.9.2008. The motion is supported by the affidavit of Duncan Muchina sworn on 30th July 2009.

On the 19th day of September 2008, the Central provincial Land Disputes Tribunal's decision in Nyeri 2 of 2005 was read and adopted by the Senior Resident Magistrate sitting at Karatina. The applicants filed Nyeri H.C.C.A. No. 87 of 2008 to challenge the decision. The appeal was summarily rejected on 28th January 2009. It is the submission of Mr. Muthoni, learned advocate for the applicants that the applicants were of the mistaken belief that the 60 days fixed by the statute would start to run from the date of the reading of the award when they filed the appeal. What I get from the submissions of the learned advocate is that the applicants feel that their appeal was wrongly rejected. There is no evidence to show whether the applicant have appealed against the order summarily dismissing the appeal. There is also no indication whether the applicants have made an application for review. If well advised all is not lost for the applicants.

It is not in dispute that the period to appeal against the decision of the Provincial Land Disputes Appeals Committee is limited to 60 days under S. 8(9) of the Land Disputes Tribunals Act No. 18 of 1990. In a nutshell the time is limited by statute. The law did not give the court any discretion to extend time to appeal. limited by statute. There is also no provision for extension of time to apply for leave under the limitation of Actions Act. The Court of Appeal in the case of Wilson Osolo =VS= John Ojiambo Ochola and Attorney General C.A. No. 6 of 1995 (unreported) expressed itself as follows:

“It can readily be seen that order 53 rule 2 (as it then stood) is derived verbatim from S. 9(3) of the Law Reform Act. Whilst the time limited for doing something under the Civil Procedure Rules can be extended by an application under Order 49 of the Civil Procedure Rules, that procedure cannot be availed for extension of time limited by statute, in this case. The Law Reform Act.”

The matter being dealt by the Court of Appeal in the above case was in respect of judicial review proceedings. But the cardinal point which came out of the aforesaid decision is that the court has no jurisdiction to extend time fixed by statute and where the legislature did not donate the discretion to the court to do so.

In the end I am of the view that the motion is incompetent and unmerited. It is ordered struck out and dismissed with no order as to costs.

Dated and delivered this 13th day of January 2010.

J.K. SERGON
JUDGE

In open court in the absence of the parties.

J.K. SERGON
JUDGE