



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 38 of 2008

FRANCIS MBURUGU MAKATHIMOAPPELLANT

VERSUS

RAEL KIRIGO MAKATHIMORESPONDENT

RULING

On 29th April 2008 the applicant's appeal against the decision of the Eastern Provincial Appeals Committee was placed before me pursuant to the provisions of section 79C of the Civil Procedure Rules. I summarily dismissed the appeal. In my view, it was brought out of time and with leave of a court without jurisdiction.

The applicant in this application now seeks that I review that decision as, according to him, there is an error apparent on the face of the record. The error in question is that indeed the appeal was filed within the prescribed time. That the decision of the Appeals Committee was read on 4th February 2008 and the appeal filed on 1st April 2008 – constituting 57 days while the law provides for 60 days.

The respondent in reply to the foregoing averments has deposed that the Appeals Committee decision being challenged was given on 9th January 2008 and that the applicant ought to have filed the appeal on 9th March 2008.

I have considered these arguments and the only authority cited, namely Eunice Kajuju V. Diocese of Meru Trustees, Ruiru Catholic Parish, HCCA No. 86 of 2002 in which Lenaola, J. held, among other things that the sixty (60) days' right of appeal is computed from the date of the decision of the Appeals Committee. The sole issue in this application is whether the appeal was lodged within sixty (60) days as stipulated by section 8(9) of the Land Disputes Tribunal Act.

That subsection states:-

“(9). 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:” (emphasis supplied).

According to a copy of the record of proceedings before the Appeals Committee, the appeal was dismissed on 9th January 2008. It is also clear from the annexures in this application that the decision was subsequently read on 4th February 2008 by A.K. Mwicigi, DM II (Prof) (as he then was).

It is the contention of the applicant that time began to run from that date. If that be so then, in terms of section 57 of the Interpretation and General Provisions Act (Cap 2), the appeal ought to have been filed on 28th April 2008. In that case, the appeal having been filed on 1st April 2008 was within time. The respondent, on the other hand strongly argues that time began to run after the decision of the Appeals Committee was read on 9th January 2008. According to her the applicant ought to have filed the appeal latest 9th March 2008, being sixty days from 9th January 2008.

Clearly, the computation by the parties are not in accordance with the law as stated above. Once again, in strict computation of time in terms of section 57 of the aforesaid Act, sixty days from 9th January 2008 expired on 3rd April 2008.

I turn now to the provisions of section 8(9) of the Land Disputes Tribunal Act, which I have reproduced earlier in this ruling. That sub section is clear that the sixty days are to be computed from the date of the decision of the Appeals Committee. The decision of the Appeals Committee was on 9th January 2008.

There is no similar provision in respect of the Appeals Committee's decision for the reading of the award by the magistrate as is the case in the decisions of the Land Disputes Tribunal.

It was therefore improper for the Appeal Committee's decision to be treated as that of the Land Disputes Tribunal by filing it in the magistrate's court for purposes of entering judgment. In other words the magistrates' courts' role does not extend beyond entering judgment and issuing of a decree.

From the computation I have set out above the appeal having been filed on 1st April 2008, I come to the conclusion that the appeal was filed within time.

That being my finding, the order of summary rejection is reviewed and the appeal reinstated. The only other matter I wish to point out is that the Land Disputes Tribunals Act is a special legislation. The application of the Civil Procedure Act or the rules is limited. For instance, the only directions to be given by the High Court is under the proviso to section 8(9) of the Land Disputes Tribunals Act to the effect that the appeal involves an issue of law (other than customary law).

The directions are sought before a single judge. It is therefore doubtful that section 79(C) of the Civil Procedure Act is applicable.

For these reasons, the applicant shall set the appeal down for directions without delay.

I make no orders as to costs.

Dated and delivered at Meru this 23rd day of January 2009.

W. OUKO

JUDGE