



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Appeal 133 of 2006

JOHN KARANI HERMAN M'MBUI 1ST APPELLANT

STEPHEN MWITI M'MBUI 2ND APPELLANT

VERSUS

SAMUEL KABITI M'MBUI RESPONDENT

MARGARET HERMAN M'MBUI RESPONDENT

RULING

The instant application dated 19th November, 2007 seeks the striking out of the appeal herein “*for being an abuse of the court process and bad in law*”. It is expressed to be brought under Order VI Rule 13(1) (a) and (d), Order VIII Rules 1(2) and 20 of the Civil Procedure Rules. The application is premised only on one ground, namely, that the instant appeal was filed out of time.

In reply, the respondent has maintained that the appeal was filed within the time stipulated by law; that the application is incompetent for citing the wrong provision of the law and for non-compliance with law.

I have considered these arguments and the single authority cited in support of the applicant’s application **Eunice Kajuju V. Diocese of Meru Trustees, Ruiru Catholic Parish**, HCCA No. 86 of 2002.

The sole issue in dispute is whether or not the appeal was filed within sixty (60) days as stipulated under section 8(9) of the Land Disputes Tribunals Act, which provides that:-

“8. (a) 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: 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.”

According to the applicant the Appeals Committee’s decision was rendered on 10th April 2006 and this appeal filed on 13th December 2006, in his view, some eight (8) months’ later.

The respondent on the other hand is categorical that the decision of the Appeals Committee was read to the parties on 23rd November 2006 and this appeal filed barely 20 days later on 13th November 2006.

I have perused a copy of the proceedings before the Appeals Committee annexed by the applicant and a copy of the proceedings before the Resident Magistrate at Meru.

It is evident that the appeal was heard by the Eastern Province Land Disputes Appeals Committee sitting at Embu on 24th May 2006 and its decision rendered the same day – 24th May 2006. On that day all the parties were present.

I have reproduced the provisions of section 8(9) of the Land Disputes Tribunal Act which limits the time for filing appeal to this court to sixty days from the date of the Appeals Committee's decision. It is apparent from the respondents' annexures that the Appeals Committee's decision was read by the Magistrate's court on 23rd November 2006.

If the award was read in the magistrate's court on 23rd November, 2006 then the respondent herein had up to 12th February 2007, constituting sixty (60) days to bring this appeal in strict construction of section 57 of the Interpretation and General Provisions Act.

However if we were to compute the sixty days again in accordance with the above provision from the date of the decision of the Appeals Committee, the respondent ought to have brought this appeal not later than 16th August 2006. What is the period to be taken into account in computing the sixty days?

The answer to this question is in section 8(9) of the Land Disputes Tribunals Act. It is from the date of the decision of the Appeals Committee being complained of. It must be remembered that there is no provision for filing the decision of the Appeals Committee in the magistrate's court. That requirement under section 7(1) and (2) is limited only to the decision of the Land Disputes Tribunal.

Section 8(7) of the Act provides that the Appeals Committee after giving each party an opportunity to be heard shall determine the appeal giving reasons for its decision. Subsection 8 states that the decision is final on issues of fact and appeal to this court is only on a matter of law which must be so certified before the appeal can be set down for hearing. Clearly from the above the magistrate's court's role does not extend beyond entering of judgment in accordance with the decision of the tribunal. It has no jurisdiction in matters relating to the decision of the Appeals Committee.

Having come to that conclusion it follows that the time spent in the magistrate's court was of no consequence in the computation of time. This appeal ought to have been filed on 16th August 2006. Having been filed on 13th December 2006, the appeal is for striking out for being out of time. The appeal is hereby ordered struck out with costs to the applicant.

Dated and delivered at Meru this 19th day of January 2009.

W. OUKO

JUDGE