

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Miscellaneous Civil Application 14 of 2009

ELISIO NYAGA *alias* WABENGI WARUCHAAPPLICANT

VERSUS

M'KUURA KIRAITHERESPONDENT

RULING

The applicant seeks leave of the court to file an appeal out of time. The parties in this ruling have had a protracted dispute. It begun at the District Land Dispute Tribunal. The applicant was unsuccessful and appealed to the Appeals Committee at Embu No. 57 of 1999. The decision of the Appeals Committee is dated 27th March 2002. The applicant deponed that neither him or the respondent were aware of the contents of the decision of the Appeals Committee until it was read by the magistrate on 20th September 2002. The applicant again being dissatisfied with the decision of the Appeals Committee appealed to the High Court, that is, High Court Civil Appeal Meru No. 120 of 2002. That appeal was filed on 28th October 2002. The appeal according to the computation of time was not within the period prescribed by law. The applicant before filing this present application withdrew that appeal which had been filed out of time. The applicant argued that due to the Appeals Committee's failure to read their decision he failed to file his appeal within 30 days of their decision. That is the period which is set out in Section 8(9) of the Land Dispute Tribunal Act. The respondent in opposition to the application deponed that the decision reached by the Appeals Committee was made known to them. In this regard, he requested the court to look at the proceedings of the Appeals Committee. I have perused those proceedings and there is nothing to indicate that the decision was read to the parties or that the parties were present. The proceedings reflect the evidence tendered by the parties and there is no date seen at the beginning of those proceedings. I am therefore unable to confirm the date that the parties gave evidence in order to also confirm that it was the same day the Appeals Committee reached their decision. There is only a date reflected at the end of the ruling. The respondent does not deny that the decision of the Appeals Committee was read out by the court. I find that to be the correct position. It does not seem to have been necessary for the court to read the decision after the Appeals Committee had read the same, if indeed the Appeals Committee read it. I find that the Appeals Committee failed to notify the parties of their decision to enable any one of them that was aggrieved to file an appeal to the High Court within the period set out under Section 8(9). Although there is no specific power for extensions to file an appeal out of time under the Land Dispute Tribunal Act, I find that the Appeals Committee is a body which falls under the supervision of the High Court as provided under Section 65(2) of the Constitution. That Section provides:-

“65(2) The High Court shall have jurisdiction to supervise any civil criminal proceedings before subordinate court or court martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by those courts.”

Without wishing to preempt the appeal, I find that the Appeals Committee raised fundamental points of law that need to be considered by the High Court. To that end, the extension to allow the applicant leave to file an appeal out of time will ensure that the ends of justice are met. I therefore grant the following orders:-

1. *The applicant is granted leave to appeal within 30 days from today from the decision of the Appeals Committee at Embu Case No. 57 of 1999.*
2. *Since the failure by the Tribunal to read their decision to the parties cannot be blamed on any of the parties, I order that each party bear their own costs.*

Dated and delivered at Meru this 12th day of March 2009.

MARY KASANGO

JUDGE