REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Misc 53 of 2008

BONIFACE KINYENZE KIAMBA ALIAS BONIFACE N. KIAMBA....APPLICANT

VERSUS

MBULA KAVONI ALIAS MBULA KATONI …….....RESPONDENT

RULING

1. The Application before me is premised on section 8 of the Land Disputes Tribunals Act, section 3 and section 9 of the Civil Procedure Act and Order XLIX Rule 5 of the Civil Procedure Rules and the Applicant Boniface Kinyenze alias Boniface K. Kiamba seeks leave to appeal out of time against the decision of the Eastern Provincial Land Disputes Committee dated 11.1.2008 in its case No. 31/2006. The reasons for delay in filing the appeal within the statutory 30 days are set out in the body of the Application.

2. In the said paragraphs he depones that the appeal before the Committee was heard on 11.1.2008 and judgment was delivered on the same day. He then instructed his advocates on 16.1.2008 to appeal against the decision and on the same day the advocates aforesaid applied for certified copies of the proceedings but after waiting for a month he enquired from his advocates and they had not received the proceedings. He returned to the Committee and was asked to pay Kshs. 2,300/= for the proceedings and he did so on 5.3.2008. He eventually received the proceedings on 14.3.2008 and his advocates filed the present Application on 30.3.2008. He denies that he is guilty of any laches and insists that he has been intent on pursuing his right to an appeal and the delay in doing so was caused by the Committee.

3. In response, the Respondent in his Replying Affidavit sworn on 9.3.2009 depones that the Applicant is a vexatious litigant and has twice lost cases against him. That he has sat also on his right of appeal and the Applicant's mistakes should not be visited on him and that equity should not aid the indolent.

4. I have taken into account the submissions by the advocates for the parties but my considered view is that the period of delay in filing the appeal is not inordinate. I say so because time expired on 11.3.2008 and proceedings were obtained on 16.3.2008 while the present Application was filed on 30.3.2008. It is also clear that the Applicant acted within 5 days of the decision to instruct his advocates to appeal and on the same day, they sought proceedings from the Committee to enable them prepare the appeal. Later, the Applicant personally followed up the proceedings until he obtained them. I cannot therefore find that he was indolent and on the other hand I find that he was alert and interested in pursuing his right of an appeal.

5. The explanation given is also reasonable in that the delay was caused by the Committee's inability to

respond to the letter of 16.1.2008 in good time and obviously Embu is also a distance from Nairobi. I accept the explanation, in any event.

6. I will exercise discretion and grant leave to appeal out of time and the Appeal should in any event be filed within 21 days of this order. Costs shall abide the appeal.

7. Orders accordingly.

D**ated and delivered at Machakos this 14th day of May 2009.**

Isaac Lenaola

Judge

In the presence of: Mr. Kisebu for Applicant

Isaac Lenaola

Judge