

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
CIVIL APPEAL 128 OF 2003

ESHMAEL ONACHA AMWENDE) EZINA AMWENDE) -----APPELLANTS

VERSUS

DAMARIS AMBOGA ELISHA CHOGO)-----
RESPONDENTS

J U D G M E N T

The appellants filed this appeal challenging the decision and Finding of the Kakamega Provincial Land Disputes Tribunal in Civil Case No. 157 of 2002 delivered on 15th May, 2003. The decision of the Tribunal was as a result of the decision of the **TIRIKI WEST DIVISION LAND DISPUTE TRIBUNAL'S** decision made on 3/9/2002 in Civil Case No. 84 of 2002.

The decision of the Kakamega Provincial Land Tribunal was made on 15/5/2003. This appeal was filed on 13/10/2003. Mr. Sagasi for the Respondent submitted that the appeal was incompetent as it was filed out of time. It is my considered view that instead of evaluating the submissions by both parties on the substantive issues, it will be prudent to first deal with the issue of limitation.

Section 8 (9) of the Land Disputes Tribunals Act 1990 (Act No. 18 of 1990) states as follows:-

“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.”

The decision of the Appeals Tribunal was delivered on 15/5/2003 and the appeal was filed on 13/10/2003. Under the provisions of the Land Disputes Tribunals Act 1990, the Appeal ought to have been filed within Sixty days from 15th May, 2003. It is therefore clear that the Appeal herein was filed out of time.

Mr. Amendi, Counsel for the Appellant, urged the court to enlarge time should it find that the appeal was filed out of time. The provisions of Section 95 of the Criminal Procedure Code (Chapter 21 Laws of Kenya) is not applicable in this case. The Section relates to enlargement of time where a period has been fixed or granted by the court itself. In the current situation the limitation period is provided by the law. The appellant ought to have applied for the extension of time giving reasons why the appeal was not filed within sixty days. I do note that the Kakamega Provincial Land Dispute Tribunal's proceedings were certified on 15th August, 2003 but this cannot be taken to be the date when the sixty days were supposed to begin running. The court cannot on its own motion extend the time for the filing of the appeal and consider the appeal to have been properly filed within time. The appeal was filed three months out of the permitted time and is therefore incompetent.

At the end, this appeal is struck out for having been filed out of time. The appellant shall pay costs to the respondent.

Dated, signed and delivered at Kakamega, this 23rd day of July, 2009

SAID J. CHITEMBWE

J U D G E