



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Miscellaneous Civil Application 2 of 2009

MUIGAI MUTHANIA.....APPLICANT

VERSUS

TERESIA WAITHIRA GITAU (*as legal representative of estate of*

WANGARI KAHARE GAKUNYI- Deceased).....RESPONDENT

RULING

By a Notice of Motion dated 8th January, 2009 and filed in court on 12th January, 2009 and expressed to be brought under *Orders L rule 1, XLIX rule 5* of the Civil Procedure Rules, *section 8 (9)* of the Land Disputes Tribunals Act, *Section 58* of the interpretation and General Provision Act and *Section 75* of the Civil Procedure Act and all other enabling provisions of the Laws of Kenya, the applicant prayed that this court be pleased to enlarge time within which he may lodge an appeal against the judgment and or decision of the Provincial Land Disputes Appeals Committee, Central delivered on 16th July, 2008. He further prayed that the annexed memorandum of appeal be deemed as filed on payment of the requisite court fees. In the same breathe he prayed that the court does certify that there are points of law arising in the intended appeal. Finally he prayed for costs of the suit.

The grounds in support of the application were that the applicant was the registered proprietor of land parcel **No.16/Ndanyu-chege/182** hereinafter referred to as “*the suit premises*” which he was at risk of losing pursuant to the decision made by Gatanga Land Disputes Tribunal and confirmed on 16th July, 2008 by the Provincial Land Disputes Appeals Committee, Central Province when both tribunals had no jurisdiction whatsoever to make such orders. That the applicant lodged an appeal in Nyeri HCCA No.75 of 2008 within the time required by the law, which appeal was however struck out for want of certificate that there were issues of law involved in the intended appeal. There is no specific procedure under the Land Disputes Tribunals Act to be followed to have the judge certify that there were issues of law, other than customary law involved in such an appeal. That intended appeal raises issues of law which interlia, go to the jurisdiction of the tribunals that made the orders/judgment intended to be appealed against. In the event the orders sought are not granted, the applicant will be shut out unheard which will go against the time honoured doctrine of **Audi Alteram Partem**. The final ground upon which the application was brought was that the orders sought were just, meet and fair to enable the applicant ventilate his rights on appeal.

In support of the application, the applicant swore an affidavit. In the main he deponed:-

“1.....

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3. That in 1986, one Wangari Kahare Gakunyi (now deceased), the husband of the respondent filed a suit in Nairobi HCCC No.232 of 1986 claiming the suit land against me, which suit was declared as having abated on 23rd June, 2003.
4. That while the suit (Nairobi HCCC No.232 of 1986) was still pending in court, the respondent's husband instituted proceedings at the Gatanga Land Disputes Tribunal in case number 2 of 1998 which amid protests entered its judgment declaring that I do surrender the land to the deceased's late husband.
5. That the Gatanga Land Disputes Tribunal proceeded to make the said orders when they were fully aware of the pending court case in Nairobi HCCC No.232 of 1986, where all my attention was focused.
6. That eventually, I lodged an appeal against the said judgment to the Appeals Committee in the Provincial Land Appeals Tribunal in Thika claim No.6 of 2008 and despite raising the issue of jurisdiction, the Appeals Committee, in its judgment given on 16th July, 2008 decided that I should surrender the land to the respondent.
7. That immediately after the judgment, on 15th September, 2008, I lodged an appeal in Nyeri HCCC No.75 of 2008, which was however struck out on 11th November, 2008 before I could file an application (which was in the process of preparation) seeking for a certificate on issues of law given by the High Court judge.
8. That according to the draft memorandum of appeal annexed hereto, the intended appeal raises issues of law, in that the Gatanga Land Disputes Tribunal as well as the Provincial Land Appeals Tribunal lacked jurisdiction to deal with the suit land and specifically to order that I surrender ownership of the land to the respondent.
9. That my advocates on record have advised me, which advise I verily believe to be true that I have a good appeal to present before the High Court which I have endeavoured to prosecute, but for the material and grave technicality of obtaining a certificate on issues of law and which I implore this Honourable Court to grant me leave to file in order for the ends of justice to be met.

At the interparties hearing of the application, **Mr. Mugambi**, learned counsel for the applicant orally applied to amend the application so as to include *section 3A* of the Civil Procedure Act as a further provision under which the application had been brought. **Mr. Imboko**, learned counsel appearing for the respondent not objecting, I granted the application.

In support of the application, **Mr. Mugambi** submitted that the appeal was arguable as the award was in excess of jurisdiction. The application had been brought timeously. The Act is silent as to whether time can be enlarged after the expiry of 60 days. That *section 3A* gave the court wide latitude. Finally counsel submitted that no prejudice will be suffered by the respondent if the orders sought are granted. He could be compensated by an award of costs. In support of the above submissions counsel relied on the following authorities:

1. **Simon Ndung'u & Anor. V Kangathia Kiuma Misc.Appl.No.191 of 1999**
2. **Esther Tala Chebiegon V Kiplagat Arap Biator Misc.Appl. No.533 of 2004**
3. **James Gakono Ngugi V Jane Njoki Ngugi & Anor. Civil Application No.300 of 2004 and**
4. **Joseph Muriithi Njiru V Teresiah Wanja Raymod Civil Application No.259 of 2007.**

The application was opposed. **Mr. Imboko** submitted that the court cannot grant itself powers which were not granted by parliament when it passed the Land Disputes Tribunals Act. No law or statute had

been cited that empowered this court to enlarge time. That the authorities cited were distinguishable. He therefore prayed for the dismissal of the application.

I have carefully read the application, the grounds upon which it is anchored, the supporting affidavits and the annexures thereto. I have also considered the rival oral submissions. The issue for determination in this application is simple and straightforward – does this court have jurisdiction to enlarge time within which a party may lodge an appeal to this court following the expiry of 60 days provided for in the Land Disputes Tribunals Act? However before I answer the question, it is necessary to set out issues which are not in dispute in this application. It is common ground that the applicant having been aggrieved by the decision of the Provincial Land Disputes Appeals Committee, Central Province, lodged an appeal to this court as required in time being HCCA No.75 of 2008. However, when the said appeal came up for admission to hearing on 11th November, 2008 it was struck for want of certificate that an issue of law (other than customary law) was involved in terms of *section 8(9)* of the Land Disputes Tribunal Act. It is also common ground that the Land Disputes Tribunals Act has no provision of extension of time once the sixty days in which an appeal ought to be filed in the High Court under *section 8(9)* of the said Act has expired. The applicant's take on the issue however is that this court has wide, inherent and unlimited jurisdiction to extend time in terms of *section 3A* of the Civil Procedure Act and *section 59* of the Interpretation and General Provisions Act.

The respondent is however of a contrary view. Her position is very simple; the court cannot grant itself powers which were not granted by parliament when the Land Disputes Tribunals Act was enacted. In other words she is saying that had parliament intended that time for filing appeal could be extended by this court it should have specifically stated so.

I tend to agree with the position taken by the respondent. There is no right of extension of time in an appeal against the orders of Land Disputes Tribunals Act. To my mind Land Disputes Tribunals Act, sets out a special jurisdiction and there being no provision for extension of the 60 days provided for the appeal under *section 8 (9)* of the said Act the Provisions of the Civil Procedure Act and the rules made thereunder cannot be invoked to give such powers to this court. As correctly observed by **Kimaru J.** in the case of **Esther Tala Cheblegon** (supra) whose facts and the issues involved are on all four corners with the instant application,

“.....The procedure as provided by the Land Disputes Tribunals Act excludes any provision related to extension of time. The applicant cannot import civil procedure rules into a specific procedure provided by the Land Disputes Tribunal Act and purport to seek extension of time. In my mind, the applicant can only invoke the jurisdiction of the court where there is no specific law governing the situation. In the instant case, the Land Disputes Tribunals Act has excluded provisions for extension of time....”

I totally agree with this sentiments. I would however add that had parliament intended to provide for extension of time in certain circumstances, it would have specifically stated so in the Act. The intention of the Act was to resolve certain land disputes without undue regard to technicalities. It was for that reason that the advocates were barred from representing parties before those tribunals. The act specifically provided for an appeal to the Land Disputes Appeals Committee from the Land Disputes Tribunal within 30 days. Thereafter an appeal to this court on matters of law only from the appeals committee's decision was to be within 60 days. Those timelines had a purpose to enable the disputes to be resolved as soon as possible. That would explain why parliament did not see the need to provide for extension of time. It will therefore be absurd if this court was to import the other provisions of the law to enlarge time where none exists. No extension of time is envisaged by the Act for a party, who for some reason, does not file an appeal within 60 days. *Section 3A* cannot be invoked to confer jurisdiction to this court to extend time when the parent Act does not contemplate such scenario. It is on this basis that I part company with **Okwengu J.** in her ruling in the case of **Simon Ndungu & Anor.** (supra).

Section 59 of the Interpretation and General Provisions Act is of no assistance to the applicant either. The time within which an appeal from the decision of the provincial Land Disputes Appeal Committee to the High Court has been provided for under *section 8 (9)* of the Land Disputes Tribunals Act. However

there is no provision for extension of time. As correctly observed by **Waweru J.** in **Joseph Njoroge Thairu & Anor. V Stephen Kiongo Kairu & Anor. Misc.Appl. No.403 of 2005**

“.....where a time is limited by statute for the taking of any action or proceedings, unless the same statute or other statute or subsidiary legislation donates to the court power to extend that time, the court does not have any inherent power to extend time I so find. Therefore, Section 3A of the Civil Procedure Act has not been properly invoked....”

Those too are my views in the circumstances of this case.

In the result, I find the application to be unmerited. It is accordingly dismissed with costs to the respondent.

Dated and delivered at Nyeri this 17th day of September, 2009.

M.S.A. MAKHANDIA

JUDGE