



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**

**Civil Appeal 64 of 2008**

**JAVAN LASIEMA OTE ..... 1<sup>ST</sup> RESPONDENT/APPLICANT**

**JANE LUSIOLA LUMADI ..... 2<sup>ND</sup> RESPONDENT/APPLICANT**

**JOSHUA KIGIKA ..... 3<sup>RD</sup> RESPONDENT/APPLICANT**

**V E R S U S**

**STEPHEN NJOROGE NJENGA ..... 1<sup>ST</sup> APPELLANT/RESPONDENT**

**NATHAN MADOLIO AGESA ..... 2<sup>ND</sup> APPELLANT/RESPONDENT**

**SILAS ASASI ..... 3<sup>RD</sup> APPELLANT/RESPONDENT**

**R U L I N G**

The respondent filed the application dated 27<sup>th</sup> October, 2008 seeking orders that the memorandum of Appeal filed on 15<sup>th</sup> September, 2008 be struck out and that costs in both the subordinate court and the High Court be awarded to the respondent. The application is brought under order XLI Rule 27, **sections 3A and 78 (2)** of the Civil Procedure Rules and section 8 of the Land Disputes Tribunal Act, No.188 1990.

Mr. Chegenye, Counsel for the applicant submitted the Western Province Appeals Committee for Land Disputes pronounced its ruling on 10<sup>th</sup> April, 2008 and the Memorandum of Appeal was filed on 15<sup>th</sup> September, 2008. This was five months and five days later and therefore outside the sixty (60) days period provided under **section 8** of the Land Disputes Tribunals Act No. 18 of 1990. Counsel submitted that the Appeal is null and void for non compliance with the law and urged the court to strike it out with costs to the applicants.

Mr. Kundu, Counsel for the respondent submitted that the decision of the Appeals Committee was not pronounced before all parties on 10<sup>th</sup> April, 2008. Counsel submitted that on 10<sup>th</sup> April 2008 none of the parties appeared before the tribunal and that although the proceedings are dated 10<sup>th</sup> April, 2008, the same do not indicate that the decision of the Appeals Committee was delivered on that date.

Counsel for the Appellants further submitted that the decision of the Appeals Committee was pronounced before all parties on 16<sup>th</sup> July, 2008 before the Vihiga Senior Resident Magistrate's Court. Parties were informed of the sixty days right of Appeal by the Vihiga Senior Resident magistrate and that the Appeals Committee did not advise the parties on the sixty days right of Appeal period. Counsel

submitted that the Memorandum of appeal was filed within time and relied on the case of **JOSEPH AMUYEKA & ANOTHER –VS- PHILIP MWACHI, KAKAMEGA CIVIL APPEAL NO.84 OF 2002.**

The only issue for determination in this application is whether the Memorandum of appeal dated 8<sup>th</sup> August, 2008 and filed on 15<sup>th</sup> September 2008 was filed out of time. **Section 8 (9)** of the Land Disputes Tribunals Act, No. 18 of 1990 states as follows:-

***(9) 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 main question is whether the decision of the Tribunals is the one litigants Appeal against or it is the decision of the magistrate's court being appealed against. Can a litigant appeal immediately the Appeals Tribunal or the Land Disputes Tribunal pronounces its decision or one has to wait for the adoption of the Tribunal's decision by the magistrate's courts before filing an Appeal.

**Section 7** of the Land Disputes Tribunal Act provides that decisions of the Land Disputes Tribunal, shall be filed in the magistrate's courts together with any deposition or documents adduced before the Tribunal. This section is expounded by rule 20 of the Act.

The provisions of **section 8 (9)** on the sixty (60) days period is quite clear. Indeed there is no requirement that the decision of the Provincial Appeals Tribunal has to be filed before the magistrate's court. **Section 4** of the Act, establishes Land Disputes Tribunals and their composition. It is the decision of these Tribunals that have to be filed before the magistrate's court for adoption. The decision of the Appeals Committee can be appealed from directly after it is pronounced and one is not required to refer the decision to the magistrate's court for adoption.

**Section 8** of the Land Disputes Tribunals Act allows litigants to appeal to the Appeals Committee within **thirty (30)** days from time the Tribunal makes its decision. Once the Appeals Committee makes its decision, an aggrieved party has **sixty (60)** days to Appeal to the High Court. This being the position of statutory provisions, it is clear that an Appeal has to be filed within sixty (60) days from the time the appeals Committee makes its decision and within thirty (30) days from the time a Land Disputes Tribunal makes its decision.

Counsel for the appellant's contention that the decision of the Appeals Committee was properly made on 16<sup>th</sup> July, 2008 when parties appeared before the Vihiga Senior Resident Magistrate's Court seems to be contrary to the provisions of **section 8 (9)** of the Act. Indeed the Appeal is against the Appeals Committee's decision and not against the magistrate's decision. The magistrate adopts the initial decision of the Land Disputes Tribunal and not the decision of the Appeals Committee. The decision of the Appeals Committee can only be varied by the High Court.

I have looked at the case of **JOSEPH AMUYEKA AND JOAB CHITAYI ODONGO –VS- PHILIP MWACHI OTINGA (KAKAMEGA CIVIL APPEAL NO.84 OF 2002)** but I do find that the issues in that case were different from ones in this case. For the interest of justice, I have also looked at the issues deliberated by the Appeals Committee and the same related to access roads. The Appeals Committee's decision did not alter or cancel the names of the registered proprietors.

The outcome is that the Memorandum of appeal herein was filed after the expiry of sixty days from the time the Provincial Appeals Committee made its decision and was therefore filed out time. The Appeals Committee made its decision on 10<sup>th</sup> April, 2008 and the Memorandum of appeal was filed on 15<sup>th</sup> September, 2008 which was outside the sixty (60) days period. It does not matter whether the parties were not present when the Appeals Committee made its decision as the Committee was not expected to be recalled to pronounce its decision at a later date after it did so on 10<sup>th</sup> April 2008.

The Memorandum of Appeal filed on 15<sup>th</sup> September 2008 is hereby struck out for having been filed

out of time. Each party shall meet its own costs for the subordinate and superior courts.

*Delivered, dated and signed at Kakamega this 17<sup>th</sup> day of September, 2009*

**SAID J. CHITEMBWE**

**J U D G E**