



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

**Civil Appeal 73 of 2001**

**FRANCIS MURIGU GICHURI ..... APPELLANT**

**VERSUS**

**DOUGLAS KANGURU GICHUMBI ..... RESPONDENT**

*(Appeal from the award of the Central Provincial Lands Dispute Appeals Tribunal Number 95 of 2000 delivered on 15<sup>th</sup> June 2000)*

**J U D G M E N T**

This appeal arises from the award of the Central Province Provincial Land Disputes Appeals Committee delivered on the 6<sup>th</sup> September 2000. This is by virtue of section 8(a) of the Land Disputes Tribunal Act. The Provincial Land disputes Appeals Committee in its aforesaid decision merely confirmed on appeal the award made by Mathioya Land Disputes Tribunal in which it ordered that the appellant do transfer to the Respondent Land parcel number **Loc. 14/Kamune/1112** measuring 1.8 acres. The appellant being aggrieved by the decisions of the provincial land Disputes Appeals Committee preferred this appeal to this court. In a memorandum of appeal dated 2<sup>nd</sup> July 2000 and filed in court the same day through **Messrs Kebuka Wachira & Company Advocates**, the appellant has faulted the decision of the Provincial Land Disputes Appeals Committee on the following grounds:

- 1. The Appeal Tribunal lacked jurisdiction to challenge the first registration of the appellant as the absolute proprietor of land parcel number Loc.14/Kamune/ 1112.**
- 2. The Appeal Tribunal was ultra vires its powers while challenging this registration in that no element of fraud was proved on the part of the proprietor/Appellant.**
- 3. The Appeal Tribunal erred in law in forcing an illegal sale of land agreement which was not evidenced in writing and there was no part performance.**
- 4. The appeal tribunal erred in law in not considering that the alleged agreement was not blessed with land control Board Consent for transfer.**
- 5. The Appeals Tribunal erred in entertaining a claim that is clearly statute barred.**

When the appeal came up for hearing, the appellant was represented by **Mr. Wachira**, learned counsel, whereas **Mr. Wahome**, learned Counsel as well appeared for the respondent. Counsel by consent agreed to have the appeal heard by way of written instead of oral submissions. Subsequent thereto, parties filed their respective submissions which I have carefully read and considered.

The issue which I must tackle first and which might determine the fate of this appeal is whether the appeal as filed is competent or not. If the appeal is incompetent then of necessity, it must fail. That being the case it becomes unnecessary to consider the other grounds raised in the memorandum of appeal.

It is the contention of the Respondent that the appeal is incompetent. Reason; by virtue of section 8(9) of the land Disputes Tribunal Act. ***“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. Provided that no appeal shall be admitted to hearing by the High Court unless a judge of that court has certified that an issue of law (Other than Customary Law) is involved ...”** The decision of the appeals committee according to the respondent is dated 6<sup>th</sup> September 2000. Sixty (60) days required for the filing the appeal to this court from such an award if at all elapsed on or about 5<sup>th</sup> November, 2000. Yet this appeal was not filed until 2<sup>nd</sup> July 2001, almost one year later. It would appear therefore that the appeal was filed out of time and without leave of the court. Accordingly it is incompetent according to counsel for the Respondent.

The appellant did not address this critical and pertinent issue in his written submissions. The best I can do in the circumstances therefore is to be guided by the record of the proceedings.

It is clear from the record that the decision of the provincial Land Disputes appeals Committee was rendered on 6<sup>th</sup> September 2000. If the appellant was minded to file an appeal against such decision, he ought to have done so within 60 days as provided for by section 8(9) of the Land Disputes tribunal Act. As correctly pointed out by counsel for the respondent, those sixty days would have elapsed on or about 5<sup>th</sup> November 2000. However when was the instant appeal filed? From the record again, the appeal was filed on 2<sup>nd</sup> July 2001. That was way beyond the statutory period provided for filing such appeals. If that be the case and nothing leads me to think otherwise, then clearly the appeal is incompetent for having been filed out of time and without leave of the court. It is liable to be struck out.

Is it possible however that the appellant could have obtained leave of court to file the appeal out of time? Nothing on record gives me that confidence. From the intitlement of the memorandum of appeal, it is suggested that the appeal is brought by virtue of leave granted on 19<sup>th</sup> June 2001 in **Nyeri High Court Civil Misc. application number 195 of 2000**. I did call for the said file from our registry. However the registry staff were unable to trace such a file from their records. Accordingly I have been unable to see any order granting the appellant leave to file the appeal out of time. I have nonetheless come across an order issued on 19<sup>th</sup> June 2001 by **Justice J. V. O. Juma**. That order was however issued in this case and does not amount to extension of time within which the appellant was to file the instant appeal. The order was in these terms: “..... **That the appeal raises a point of law and the same is admitted.....**” Such an order by any stretch of imagination cannot be said to extend time within which the appeal should be filed. In fact the order suggests that the appeal had already been filed and all that the judge was doing is to certify that the appeal raised a point of law and therefore the same should be admitted to hearing as required by the provisions of section 8(9) of the Land Disputes Tribunal. I have also looked at the affidavit in support of the application pursuant to which the aforesaid order was given. Again there is no averment as to the extension of time or reasons advanced for the delay in filing the appeal within time. I would have expected the appellant to include in the record the order granting him extension of time within which to file the appeal. He did not. One can therefore safely assume that no such order was therefore obtained.

The end result is that this appeal is incompetent for having been filed out of time and without leave of court. Accordingly it is struck out with costs to the Respondent.

*Dated and delivered at Nyeri this 31<sup>st</sup> day of January 2008*

**M. S. A. MAKHANDIA**

**JUDGE**