

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

Misc Civil Appli 129 of 2007

MARTIN SIMIYU MUKHANYA

JOSEPH NYONGESA MUKHANYA.....APPLICANTS

VS

MULONDANOME KAPCHANGA WEKESA.....RESPONDENT

RULING

After hearing both counsel in this application, I made an oral ruling stating that I would dismiss the application purely on a point of law. I also said that I will put the brief ruling into writing before dispatching the file to the registry. This now is the ruling. The applicant is seeking leave to be allowed to file an appeal out of time. Infact, the leave seeks to enable him to file an appeal against a ruling/judgment which was delivered almost 7 years ago. That in itself is inordinate and in absence if a very good and profound explanation for this inordinate delay, leave would still be denied. Be that as it may however, the reason I dismissed the application is encapsulated in ground no.4 of the grounds of opposition. The applicant seeks to appeal against the decision of the Land Disputes Tribunal in S.P.M C LDT No.7 of 2001. My stand on this matter which I have held in many such applications is that an appeal does not lie to the High Court directly from a decision of the Land Disputes Tribunal Court. Section 8 of the LDT Act provides for the procedure for appeals very clearly. After the award is adopted as a judgment of the court, any aggrieved party is given 30 days reprieve to appeal to the Provincial appeals tribunal. If the Appeals Tribunal hears the matter and gives a decision that a party feels calls for intervention of the court, then the party can move to the High Court by way of appeal but the appeal must be purely on points of law. The court must also certify that the intended appeal raises issues of law before the same is admitted. The High Court is not therefore vested with jurisdiction to hear an appeal against a decision of the Land Disputes' Tribunal. This means that even if the applicant is granted leave, his appeal would still not be entertained in this court. The granting of leave would therefore first amount to an academic exercise. For these reasons, the application dated 25.06.2007 stands dismissed with costs to the respondent.

W. KARANJA

JUDGE

11/3/2008