



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Appeal 915 of 2004**

1. Land Environmental Law Division
2. Leave to lodge appeal against the decision of Gatanga Land Dispute Tribunal  
Case No 2/91
  - a) Proceedings took place in absence of applicant at the Land Dispute Tribunal Gatanga
  - b) Dispute time barred.
3. In reply-
  - a) Court lacks jurisdiction to grant orders sought,
  - b) The applicant is guilty of laches
  - c) Appeal if filed waste of time
4. Held-
  - a) For good cause application to file appeal out of time may be granted.
  - b) Delay came by not being informed of proceedings
  - c) Not a waste of courts time.
  - d) Court has jurisdiction section 3A Civil Procedure Act.
5. Case law - Nil
6. Advocate

T.T. Tiego of Onsando Ogonji & Co. Advocates for the appellant/applicant – present

L.W. Chege of J.K. Ngaruiya & Co. Advocates for the defendant/respondent – present

**MUIGAI MUTHANA.....APPELLANT/APPLICANT**

**VERSUS**

**WANGARE KAHARA GAKUNJI .....RESPONDENT**

**RULING**

**I. LEAVE TO LODGE APPEAL OUT OF TIME.**

1. The application of 27<sup>th</sup> March, 2007 seeks this courts leave to lodge an appeal against the decision/award of the land dispute tribunal at Gatanga No. 2/1998 to the Provincial Land Disputes Appeal Committee out of time.

2. The reasons given by the applicant is that the applicant as the registered proprietor of LR Loc.16 Ndungu Chege/182. The respondent who has since passed away had original sued t he applicant in HCCC 232/86. The suit abated on 24<sup>th</sup> June 2003.

3. The Land Disputes Tribunal on receiving the reference complaint proceeded to hear the dispute in the absent of the applicant. He was never notified of the hearing date, the date in which the award was made nor did he obtain notice when the magistrate/court intended to enter and make the award part of the orders of the court.

4. The applicant prays for leave to appeal out of time to the Provincial Land Dispute Appeal Committee against the decision.

**II. IN REPLY**

5. The advocate for the respondent has since had the estate of the deceased respondent come on record. She objected to the application on grounds that this court lack jurisdiction to issue such orders that the applicant is guilty of latches and the appeal is any was a waste of time.

**III. OPINION**

6. The term “waste of courts time” is unfortunate. The court is mandated to hear cases and should never be seen as a “waste of time.”

7. The applicant claims he is the registered proprietor. He has shown to court “good cause” why he was unable to file the intended appeal and is out of time. This was due to there being another court case pending at the High Court and due to non notification by the respondent and court of the proceeding.

8. I accordingly grant the application as prayed. That leave be and is hereby issued to file appeal to the Provincial Land tribunal out of time. That the appeal be filed within 30 days pending the hearing.

9. The costs be awarded to the applicant.

DATED THIS 11<sup>TH</sup> DAY OF MARCH 2008 AT NARIOBI.

**M. A. ANG’AWA**

**JUDGE**

T.T. Tiego of Onsando Ogonji & Co. Advocates for the appellant/applicant – present

L.W. Chege of J.K. Ngaruiya & Co. Advocates for the defendant/respondent – present