

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS CIVIL APPLICATION 118 OF 2007

GRACE GAJI MUTEGI APPLICANT

VERSUS

DAVID MURUTANI RESPONDENT

RULING

The application dated 5th November, 2007 and brought under sections 3A and 95 of the Civil Procedure Act and Orders 41 Rule 4, 49 Rule 5 and 50 of the Civil Procedure Rules, seeks, in the main an order to enlarge time for filing of an appeal and a stay of execution.

The order to be challenged in the intended appeal was made on 26th September, 2007 by the Chuka Senior Resident Magistrate, P. Ngare in LDT No. 18 of 2007. That order, although not part of the annexures, must have been made pursuant to the provisions of section 7 (2) of the Land Dispute Tribunal Act (the Act). That section provides that once the Land Disputes Tribunal has made a decision, the same must be filed in the magistrate's court. Upon that being done, the court shall enter judgment in accordance with the decision of the Tribunal.

Section 8 (1) of the Act provides that:-

“8(1) Any party to a dispute who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the province in which the land which is the subject matter of the dispute is situated.”

Three points are noteworthy. First, the aggrieved party has thirty days from the date of the decision of the Tribunal to appeal to the Appeals Committee. Second, the appeal must be against the decision of the Tribunal and not the decision of the magistrate, who merely enters judgment, and finally, the appeal is to the Appeals Committee.

It would appear from the annexed proceedings of the Tribunal that the award was made on 24th June 2005. The applicant had thirty days from that date to challenge the decision of the Tribunal in the Appeals Committee.

He has failed not only to do so within the stipulated period but also challenged it in the wrong forum. Any aggrieved party by dint of section 8(9) of the Act, can only appeal to this court on a point of law from the decision of the Appeals Committee within sixty days of that decision.

The Act does not provide for enlargement of the time fixed for filing an appeal in respect of the decision of either the Tribunal or the Appeals Committee. The rules envisaged to be made by the minister pursuant to Section 10(1) (c) of the Act in respect of the procedure in appeals have not been made. Even assuming that the provisions of order 49 Rule 5 of the Civil Procedure Rules apply, the applicant has not given any reasonable explanation for the delay. The fact that there was an attempt to challenge the decision by way of judicial review in itself is not sufficient or reasonable explanation for the delay of nearly two years.

Regarding stay of execution, the application is expressed to be brought specifically under Order 41 Rule 4 of the Civil Procedure Rules. That provision envisages a situation where an appeal has been filed. No appeal has been filed.

For these reasons, I find no merit in this application. It is dismissed with costs to the respondent.

Dated and delivered at Meru this 18th day of April 2008.

W. OUKO

JUDGE