REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Civil Appeal 6 of 2006

1. WINFRIDA A. ANYONYI

2. GEORGE WILLIAM M. ANYONY……APPELLANTS

V E R S U S

1. JANE KAMILA ANYONYI

2. MARY LUYAYI…….RESPONDENTS

RULING

On 16/6/2006 the Hon. G. B. M. Kariuki, J. summarily dismissed the appeal herein. His decision was based solely upon his perception that the appeal had been filed hopelessly out of time.

In arriving at that decision, the learned judge noted that pursuant to **section 8 (9)** of the **Land Disputes Tribunals Act, 1990**, appeals from decisions of Provincial Appeals Committees must be brought within 60 days of such decisions.

In this case, the learned Judge noted that the Western Province Appeals Committee made its decision on 14/5/2003. Thereafter, the appeal was filed on 10/2/2006. And it was because of that fact that the court found that the appeal had been filed hopelessly out of time.

Being dissatisfied with the summary dismissal of their appeal, the appellants have now moved this court by way of a Notice of Motion, through which they seek the review, variation or setting aside of the orders made on 16/6/2006. The said application is premised on the appellants' contention that there was an error apparent on the face of the record.

The error cited by the appellants was to the effect that the court had calculated the period of 60 days from a date that was much earlier than the date when the Provincial Appeals Committee actually delivered its decision.

Whereas the learned judge assumed that the Appeals Committee had delivered its decision on 14/5/2003, the appellants state that the decision was actually delivered on 27/1/2006.

If the appellants are correct with regard to the date when the Appeals Committee delivered its decision, that would imply that the appeal therefrom, to the High Court, was filed timeously, as the same was filed on 13/2/2006.

On the other hand, the respondent submitted that there was no error apparent on the face of the record, as the decision of the Appeals Committee is dated 14/5/2003, and that the 60 days ought to be calculated from that date.

As far as the respondent was concerned, there is no provision in the Land Disputes Tribunals Act, 1990, for the reading of awards. Therefore, it is the respondent's submission that it is the responsibility of any person who lodges an appeal to the Appeals Committees to follow through their said appeal, so as to ascertain the decision of the Committee.

In this case, the respondent faults the appellants for failing to follow through their appeal after they had lodged the same before the Appeals Committee.

The respondent also submitted that the application before me was incompetent as the order or decree sought to be reviewed, had not been extracted and attached to the application.

The appellants conceded that the Land Disputes Tribunals Act, 1990, was silent on the question of reading of awards of the District Land Disputes Tribunals as well as of the Provincial Appeals Committees. However, it was the contention of the appellants that it had been the practice, that such awards were forwarded to the courts, to be read and then enforced.

It is the appellants' case that until an award was brought to the attention of the parties thereto, at the time it is read to them, the parties would not be aware of the awards. Therefore, the appellants' submission is that the date when the decision of the tribunal or of the Appeals Committee was read out to the parties, was the date of such award, regardless of the date endorsed on the face the document embodying the decision.

The law expressly provides that an appeal to the High Court from a decision made by the Appeals Committee shall be filed within 60 days from the date of the decision complained of. A literal meaning of that stipulation would appear to be that the 60 days within which an appeal may be brought to the High Court should be calculated from the date on the face of the decision by the Appeals Committee.

In my considered opinion, if the court were to accept that literal meaning as being accurate, it could lead to serious absurdities. I say so because, amongst other things, there is no provision in the Land Disputes Tribunals Act, 1990, for the reading of the decisions made by the said Tribunals or by the Appeals Committees. That therefore begs the question as to how the tribunals or Committees would transmit their decisions to the parties thereto. And, if the parties or either of them is not yet made aware of the decision, how would he be expected to appeal against it, within 60 days of the decision or at all?

In the case of ***JOSEPH AMUYEKA & ANOTHER VS PHILIP MWACHI OTINGA – KAKAMEGA HCCA. NO. 84 OF 2002,*** the Hon. G. B. M. Kariuki, J. had occasion to express himself thus, in regard to the time within which an appeal is to be lodged from a decision of the Land Disputes Tribunal;

"***A decision that has not been pronounced or read to the parties is not a decision or an award unless and until it has been pronounced to the parties. An award in the desk of the Chairman of the Tribunal, even if dated and signed by all the members of the Tribunal, is not an award unless and until it is pronounced to the parties. To require a party to be aware of the existence of an award or decision that he/she has not had notice of is both unreasonable and unfair.***

The law expects the date of the award or decision to be the date it is pronounced. For this reason, Tribunals must pronounce their decisions or awards to the parties and date such awards or decisions on the day they pronounce them. It is expected that where the decision or award is not pronounced to the parties immediately after the conclusion of the proceedings, the Tribunal will notify the parties in writing of the date and place when the award/decision will be pronounced."

I am in full agreement with the aforegoing sentiments expressed by my learned brother, and I do therefore wholly adopt the same as if I had uttered them myself.

In the result, I find and hold that the date of the decision by the Appeals Committee was 27/1/2006, when the decision was delivered to the parties. It follows, therefore, that the appeal by the appellants was filed well within the period of 60 days from the date of the decision by the Appeals Committee.

In effect, there was an error apparent on the face of the record, which therefore warrants the review and setting aside of the order summarily dismissing the appeal herein.

Accordingly, the orders made on 16/6/2006 are set aside altogether. The said orders are hereby substituted by an order admitting the appeal to hearing.

As regards costs, I order that the same shall abide the outcome of the substantive appeal. I say so because even though the respondent did oppose the application, the respondent played no role in the decision which has now been set aside.

Dated, Signed and Delivered at Kakamega this 17th day of April, 2008.

FRED A. OCHIENG

J U D G E