

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Appeal 93 of 2006

YERI RANDUAPPELLANT

VERSUS

KARISA THOYA NGAORESPONDENT

J U D G M E N T

Karisa Thoya Ngao, the Respondent herein, filed a claim before the Land Disputes Tribunal sitting at Kaloleni over land situate at Kibwabwani Location against Yeri Randu Katore (now deceased), the appellant herein. The panel of elders heard the complaint and awarded the land in dispute to the Respondent. The Land Disputes Tribunal was convinced that Karisa Thoya Ngao inherited the land from his grandfather who had acquired the same from one Kombe Ganga by giving him a calabash of palm wine and a cock. Yeri Randu was dissatisfied with the decision and he instead opted to appeal to the Coast Provincial Land Dispute Appeals Committee. The Appeals Committee dismissed the appeal on the ground that the appeal was filed out of time. Yeri Randu Katore was aggrieved by that decision hence this appeal.

On appeal, Yeri Randu Katore, put forward a total of 5 grounds of appeal in his memorandum of Appeal. Unfortunately Yeri Randu Katore, passed away before the appeal was heard. The deceased was however substituted with Elias Changawa Kaingu as the legal representative of the estate of Yeri Randu Katore, deceased. It is the argument of the appellant that the provincial appeals tribunal erred when it dismissed the appeal without giving the appellant a right of hearing. It is the submission of the appellant that the Appeals tribunal had accepted and registered the appellant's appeal yet it knew that time had lapsed. The appellant accused the tribunal of not advising him that time to file the appeal had lapsed and that it should have granted leave to the appellant to file an appeal out of time.

Mr. Kariuki, learned advocate held brief for Mr. Mulongo learned advocate for the Respondent in arguing against the appeal. The learned advocate urged this court to dismiss the appeal on the ground that the provincial appeal's tribunal had correctly rejected the appeal under section 8(1) of the Land Disputes Tribunals Act.

I have considered the arguments for and against the appeal. It is clear from the recorded proceedings that the claim before the Kaloleni Land Dispute's tribunal was heard on 10th April 2000. The decision was read and adopted by the Kaloleni Resident Magistrate's Court on 29th May 2000 in the presence of both the appellant and the Respondent. The record further shows that the Resident Magistrate's court gave any aggrieved party 30 days to appeal against the decision. On 21st July 2000, the appellant lodged an appeal against the decision of Kaloleni District Land Disputes Tribunal. The Provincial Appeals Tribunal dismissed the appeal on the basis that the same was filed out of time contrary to section 8(1) of the Land disputes Tribunals Act No.18 of 1990. The appeals tribunals arrived at its decision after hearing the both the Appellant and the Respondent. The aforesaid decision gave rise to the filing of this appeal. According to the record it is obvious that the Respondent had applied to the appeal's tribunal to dismiss the appeal before it on the basis that the appellant had been given 30 days as from 29th May 2000 to appeal but he instead filed the appeal after the period had lapsed. Section 8(1) of the Land Dispute's

Tribunal provides as follows:

“Any party to a dispute under Section 3 who is aggrieved by the decision of the tribunal may, within 30 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.”

The decision of the Kaloleni Land Disputes tribunal was read and adopted by the Resident Magistrate’s court sitting at Kaloleni on 29.5.2000. The parties were given 30 days to appeal. It is presumed that 30 days lapsed on 29th June 2000. The appellant filed an appeal to the provincial appeals committee on 21st July 2000. By then the time fixed by statute and the court had lapsed. It is the submission of the Appellant that the Provincial Land Disputes Appeals Tribunal should not have accepted the appeal but should have advised the appellant that time to appeal had lapsed. The argument of the appellant is that he was ignorant of the time limit. It is a well settled principle of law that ignorance of the law is no excuse referred in Latin as ignorantia juris non excusat. The rule is that, whereas ignorance of fact can be an excuse, to the extent that it negatives mensrea or fault, ignorance of the law generally does not. Even if the appeals tribunal had informed the appellant about the defect, it would not have made any difference because the tribunal would not have been in a position to extend time fixed by statute. It would not also have been in a position to hear the substance of the appeal because it had no jurisdiction to hear an incompetent appeal.

In the end I am convinced the Provincial appeal’s committee rightly rejected the appeal. I see no merit in this appeal. I dismiss it with costs to the Respondent.

Dated and delivered at Mombasa this 28th day of August 2008.

J.K. SERGON

J U D G E