



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Appli 403 of 2005**

**JOSEPH NJOROGE THAIRU & 7 OTHERS .....APPLICANTS**

**V E R S U S**

**1. STEPHEN KIONGO KAIRU**

**2. SIPHIRA MUKUHI KAIRU .....RESPONDENTS**

**R U L I N G**

Section 8(1), (2), (3), (4), (5), (6), (7) and (8) of the Land Disputes Tribunals Act, 1990 (hereinafter called the Act) provide for appeals from decisions of land disputes tribunals to provincial appeals committees. Then sub-section (9) of the same section provides:-

**“(9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:**

**Provided that no appeal shall be admitted to hearing by the High Court unless a judge of that court has certified that an issue of law (other than customary law) is involved.”**

The Applicants herein have by notice of motion dated 15<sup>th</sup> March, 2005 sought leave of the court to file appeal out of time against a decision of the **Provincial Appeals Committee for Central Province** dated 25<sup>th</sup> March, 2003 in reference to land parcel **L.R. No. GATANGA/6/1999**. The application is stated to be brought under **Order 49, rule 5** of the **Civil Procedure Rules** (the Rules) and also under **sections 3A and 79G** of the **Civil Procedure Act, Cap 21**. In the course of presenting the application learned counsel for the Applicants also sought to rely on **section 59** of the **Interpretation and General Provisions Act, Cap. 2**.

I have considered the submissions of learned counsel. The power to enlarge time granted by rule 5 of Order 49 of the Rules is in respect to limited time fixed for doing any act or taking any proceedings under the Rules or by summary notice or by order of the court. That power does not extend to time limited by statute such as in the present case.

Section 79G of the Civil Procedure Act deals with ordinary appeals from subordinate courts to the High Court. It does not deal with appeals provided by other distinct and separate statutes. So, the Applicants cannot take advantage of the proviso to that section that grants power to extend the time limited by that section for filing appeals from subordinate courts.

Section 59 of the Interpretation and General Provisions Act sought to be relied upon by learned counsel provides as follows:-

**“59. Where in a written law a time is prescribed for doing an act or taking a proceeding, and power is given to a court or other authority to extend that time, then, unless a contrary intention appears, the power may be exercised by the court or other authority although the application for extension is not made until after the expiration of the time prescribed.”**

With respect, I do not see how this provision can be of assistance to the Applicants. The time within which to appeal from a decision of a provincial appeals committee to the High Court is indeed prescribed by a written law, that written law being section 8(9) of the Land Disputes Tribunals Act, 1990. Unfortunately, that written law does not give to this or any other court power to extend that time.

No law, statutory or otherwise, giving the court power to extend the time limited by section 8(9) of the Act aforesaid has been brought to the attention of the court. The cases cited by the Applicants' learned counsel do not assist. These cases, **Githiaka –vs- Nduriri [2004] 2 KLR 67** and **Egerton University – vs – Republic ex parte Ruga [2004] 2 KLR 132**, deal with extension of time under rule 4 of the Court of Appeal Rules, where power to extend time is expressly provided for.

Where a time is limited by statute for the taking of any action or proceeding, unless the same statute or other statute or subsidiary legislation donates to the court power to extend that time, the court does not have any inherent power to extend the time. I so find. Therefore, section 3A of the Civil Procedure Act has not been properly invoked.

The result is that this court does not have jurisdiction to grant the extension of time sought. The application is therefore misconceived. It is hereby struck out with no order as to costs. It is so ordered.

**DATED AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER, 2008**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 7<sup>TH</sup> DAY OF OCTOBER, 2008**