

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Civil Appeal 102 of 2003

NOAH ALIONGO OKINDA ::: APPELLANT

V E R S U S

EMILY MUHANDO ::: RESPONDENT

R U L I N G

The application before me is for the review and setting aside of the order made on 4th October 2004, summarily rejecting the applicant's appeal.

In rejecting the appeal, Hon. Justice G. B. M. Kariuki made an express finding that the appeal was filed some two-and-a-half months out of time. Therefore, in his considered opinion, the appeal was time-barred.

As the appellant had neither sought nor obtained leave of the court to file an appeal out of time, the learned judge held that the appeal was incompetent. It was for that reason that the appeal was rejected summarily, pursuant to the provisions of **section 79 B** of the Civil Procedure Act.

The facts which the learned judge relied upon to make his findings were that the decision that the appellant sought to challenge by way of appeal was made on 1st April 2003, whereas the appeal was filed on 15th August 2003.

Pursuant to the provisions **section 8 (a)** of the Land Disputes Tribunals Act, appeals to the High Court, arising from decisions of the Provincial Appeals Committees, should be filed within **60** days of the said decisions.

In seeking to have this court review the order summarily dismissing the appeal, the appellant has drawn the court's attention to the fact that the decision of the Appeals Committee was only brought to his attention on **3rd July 2003**. On that date, the decision of the Appeals Committee was read out to the parties.

As the respondent has not challenged the facts set out in the appellant's affidavit, I do hereby accept as uncontroverted, the appellant's deposition, that the Appeals Committee's decision was brought to the attention of the parties on **3rd July 2003**.

In the circumstances, it would have been absurd to have expected the appellant to file an appeal by the 31st of May 2003, whereas by that date he was not even aware that the Appeals Committee had made a decision on the appeal before it.

I am persuaded that had my learned brother been made aware of the fact that the decision of the appeals Committee was only disclosed to the parties on 3rd July 2003, he would not have held that the appeal which was filed on 15th August 2003, was time-barred.

Accordingly, I find merit in the application. I order that the order summarily dismissing the appeal be set aside forthwith. I further order that any steps or action taken subsequent to the dismissal of the Appeal be stayed until the appeal is heard and determined.

Meanwhile, the appeal shall be reinstated forthwith, and the same is hereby admitted to hearing.

The costs of the application dated 27th July 2007 shall be in the cause, in the appeal.

Dated, signed and Delivered at Kakamega, this 27th day of November 2008

FRED A OCHIENG

J U D G E