



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Misc Civil Appli 110 of 2006

LYDIA MUTHONI.....APPLICANT

VERSUS

NGURU KAMANJA.....RESPONDENT

RULING

This is a Miscellaneous Application filed under section 3 A and 95 Civil Procedure (Act). Notice of Motion seeks leave to the applicant to file his appeal out of time to the Central Provincial Appeal Tribunal and pending hearing of appeal status quo be maintained. The draft memo of appeal attached shows that the decision of the first Tribunal was already adopted before as Judgment of court. Decree is dated 4/8/2005 and a night of Appeal within 30 days was granted but the Applicant did not file any appeal. The exhibits by opposition “NK2” shows that the rice holding No. 3661 was of Nguri Kamanja and after decree the Rice holding was split into two acres each to be held by Lydia Muthoni Nguri and Sofia Wambui Nguri 2 acres. These women are described as wives of the deponent. Nguri Kamanja. It is clear the dispute was in one family.

Upon considering submissions of both Counsel and upon reading the application and the material land before the court, I am of the view that the decree of the Resident Magistrate can only be appealed against in the High Court not in the Lands Disputes Appeal Tribunal. The applicant failed to appeal to the Appeals Tribunal after the award. And also failed to exercise her right within a reasonable time after Judgment was entered in the Resident Magistrate’s Court. The delay is inordinate for above reasons I decline to grant orders sought.

Application is dismissed with costs.

Dated this 25th May, 2007.

J. N. KHAMINWA

JUDGE

25/5/2007

Khaminwa – Judge

Njue – Clerk

Ms Thungu for Applicant.

Ruling read in open court

J. N KHAMINWA

JUDGE