

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Misc Appli 160 of 2006

M'MBUI M'ARACHI APPLICANT

VERSUS

EUPHRASIO KIAMBI JOHN RESPONDENT

RULING

In the application before me, the applicant seeks extension of time to file an appeal to the Provincial Disputes Appeal Tribunal.

The applicant has deposed that he filed Land Dispute Tribunal Case No.14 of 2002 against the respondent. The case was resolved against the applicant who was aggrieved thereby.

However, he was not able to file an appeal within the prescribed period because of his son's sickness and financial constraints.

The application was duly served upon the respondents, who failed to respond to it and the same was argued *ex parte*.

Under Section 8(1) of the Land Disputes Tribunal Act,(the Act), any party aggrieved by the decision of the Tribunal has thirty days within which to prefer an appeal to the Provincial Appeals Committee.

Does the High Court have jurisdiction to extend time as sought herein? The jurisdiction of the High Court under the Act is limited to appeals from the Appeals Committee on points of law only.

The applicant has invoked Sections 3 and 3A of the Civil Procedure Act. Clearly there is no provision regarding the situation in this application. However, the Act gives the Minister power under Section 10 to make rules in respect of procedure of the tribunal regarding all matters connected with the bringing, hearing and determining disputes to the Tribunal. Specifically the Minister is empowered in sub-section 1(c) of Section 10 as follows;

"..... prescribing any procedural requirements which the minister may deem desirable in relation to appeals additional to the provisions set out in Section 7".

I am not aware of any rules made pursuant to the provisions of Section 10. It cannot be part of the mandate of the court to fill in legislative gaps.

Even if the court was to consider the application on merit, the applicant has not sufficiently explained why it took him three years to bring this application. No documentary evidence was annexed to show that his son was hospitalized. For the reasons stated, this application is struck out.

No orders as to costs.

DATED AND DELIVERED AT MERU THIS 11th DAY OF May, 2007.

W. OUKO

JUDGE