



REPUBLIC OF KENYA

HIGH COURT AT MERU

Misc Civ Appli 171 of 2001

CHOGORIA TOWN COUNCIL PLAINTIFF

VERSUS

ALICE M. NYAGA DEFENDANT

RULING

This is indeed an old application filed on 11th April, 2002. It seeks extension of time within which to file an appeal to this court from the decision of the Eastern Province Land Dispute Appeal Committee in Appeal No.151 of 2000. That application was purportedly allowed by consent on 18th April, 2002. That consent order has recently, on 26th April, 2007 been set aside by Lenaola, J and the hearing of this application ordered to start *denovo*.

The applicant has based the application on the ground that on 12th March, 2002 the court it leave to file an appeal to this court within 14 days from that date but was unable to comply because the applicant's counsel's computer "Crushed" on or 20th March, 2002 and it became difficult to retrieve the document until about 28th March, 2002 when the repairs to the computer were complete. By this time the 14 days granted by the court had expired.

The respondent filed a notice of Preliminary Objection arguing first, that the provisions of Order 44(should be 49) rule 5 of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Act do not apply to matters under the Land Dispute Tribunal Act.

Secondly, that the latter Act does not provide for extension of time. The third ground is that the delay ought to be explained. The respondent has urged the court to find that the application is frivolous, vexatious, incompetent and is otherwise an abuse of the court process.

The application and these grounds were canvassed before me on 23rd May, 2007 nearly five years after the application was filed. The Land Dispute Tribunal Act in Section 8 (9) provides that;

(a) “Either party to 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.”

It is correct, as submitted by counsel for the respondent that there is no provision in the Land Dispute Tribunals Act for extension of time to file an appeal to this court from the Appeals Committee. But counsel is clearly wrong in his submissions that Order 49 rule 5 of the Civil Procedure Rules does not apply to matters under the Land Dispute Tribunal Act. Section 79 of the Civil Procedure Act provides that

“79. The provisions of this part relating to appeals from original decree shall, as far as may be, apply to appeals;-

(a) from the appellant decree

(b) from orders made under this Act under this or under any special or local law in which different procedure is not provided”

No procedure is provided under the Land Disputes Act. According to the preamble of the Civil Procedure Act, it is

“Act of Parliament to make provisions for procedure in Civil Courts”

Finally to demonstrate that Order 49 rule 5 is applicable the same is set out here-below.

“5. Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice, or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed”.
(emphasis supplied).

The above provision allows the court to extend time fixed by itself on such terms as are just.

The 14 days from 12th March, 2002 was fixed by an order of this court (Kasanga, J). This court has the discretion to extend that period.

However, it is now trite that in the exercise of that discretion, the court must be guided by principles such as the period (length) of delay, the reasons for the delay and if there will be prejudice to the other party.

As I have observed leave to file appeal out of time was granted on 12th March, 2002. 14 days from that date would be 26th March, 2002. No appeal was filed in breach of the leave. The present application was filed on 11th April, 2002, that is approximately twenty days after the date fixed for filing the appeal. That period is neither long nor short depending on the applicant’s explanation.

According to the applicant’s counsel, his computer “crushed” and was not repaired until about 28th March, 2002. That explanation lacks merit. Computers are fairly recent phenomenon. A serious advocate’s chambers shall not be a shut down for reason that there has been a “crush” of the computer. Even assuming that the “crush” was fatal, no explanation has been offered for the period between 28th March, 2002 when the rescue works were complete and 11th April, 2002 when this application was filed. I came to the inevitable conclusion that the objection raised has merit and satisfies strictures set out in the celebrated Mukisa Biscuit Manufacturing Co.Ltd V West End Distributors.

The applicant’s Chamber Summons dated 10th April, 2002 is dismissed with costs to the respondent.

DATED AND DELIVERED AT MERU THIS 13th DAY OF JULY, 2007

W. OUKO

JUDGE