

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

Civil Appeal 84 of 2002

1. JOSEPH AMUYEKA
APPELLANTS

2. JOAB CHITAYI ODONGO

V E R S U S

PHILIP MWACHI OTINGA
RESPONDENT

J U D G M E N T

The appeal herein was filed on 9.9.02. It was from a decision of the Western Province Appeals Committee. The Award was dated 9.9.2002 but it was read on 11.7.02. In the four grounds of appeal contained in Memorandum of Appeal dated 9.9.2002, the Appellants, **Joseph Amuyeka** and **Joab Chitali Odongo**, challenged the decision of the Appeals Committee on the grounds that the award by the Butere Disputes Tribunal was a nullity and that the latter Tribunal had acted in excess of its jurisdiction in making the decision complained of.

When this appeal came up for hearing before me, Mr. Nyikuli, learned counsel for the Respondent, **Philip Mwanchi Otinga**, raised a preliminary objection that the appeal was filed out of time. He submitted that as the decision of the Western Provincial Appeals Committee was dated 7-5-02 and as the appeal was filed on 9.9.05 and as **section 8 (9) of Act 18 of 1990** required the appeal to be filed within 60 days of the decision, the appeal having been filed on 9.9.05 was out of time. He urged the court to strike it out.

On his part, Mr. Getanda, the learned counsel for the said appellants, contended that the appeal was filed on 9.9.02 within the period of 60 days from 11-7-02 when it was read. He contended that his clients were not aware of the award before it was read to them and therefore the date it bore was neither here nor there.

The appeal herein is founded on section 8 (9) of the Land Disputes Tribunals Act (Act 18 of 1990). An appeal to this court from a decision of the Appeals Committee is required under the section to be within 60 days from the date of the decision complained of. The Appellants through their counsel, Mr. Getanda, conceded that the Appeals Committee decision was dated 7.5.02 but was not read until 11.7.2002. He conceded also that the appeal was filed on 9.9.2002. The issue for determination is whether time should run from 7-5-02 when the decision was dated or 11.7.02 when it was read to the parties. This begs the question whether under section 8 (9) (supra) the decision was made when it was dated or whether it was made when it was read to the parties. It was Mr. Getanda's view that as the appellant only became aware of the decision when it was read on 11/7/02, time could not run earlier than that and that it matters not that it was dated 07-05-2002. In his view, it would be unfair to require the appellants to have filed appeal before he was notified of the decision and became aware of it. This argument is not without merit. I am told by counsel that the reasons giving rise to Awards being read long after they are dated is occasioned by the practice in the Divisional and Provincial Land Disputes Tribunals in which the said Tribunals normally date the awards/decisions without pronouncing them to the parties but instead relay them to the Magistrate Courts for pronouncement to the parties.

This practice is totally wrong and contrary to the provisions of Act 18 of 1990. Once it has reached a

decision, the Tribunal must call the parties and read the award/decision to them. Thereafter, the Tribunal may forward the award to the magistrate court for adoption as a judgment of the court. A decision that has not been pronounced or read to the parties is not a decision or an award unless and until it has been pronounced to the parties. An award or decision in the desk drawer of the Chairman of the Tribunal, even if dated and signed by all the members of the Tribunal, is not an award unless and until it is pronounced to the parties. To require a party to be aware of the existence of an award or decision that he/she has not had notice of is both unreasonable and unfair.

The law expects the date of the award or decision to be the date it is pronounced. For this reason, Tribunals must pronounce their decisions or awards to the parties and date such awards or decisions on the day they pronounce them. It is expected that where the decision or award is not pronounced to the parties immediately after the conclusion of the proceedings, the Tribunal will notify the parties in writing of the date and place when the award/decision will be pronounced. A party who is aggrieved by a pronounced decision or award may, if he or she is so disposed, appeal to this court in the case of decisions of the Appeals Committee pursuant to section 8 (9) (supra), or in the case of the Divisional Land Disputes Tribunal, to the Appeals Committee, pursuant to section 8 (1) of Act 18 of 1990. Attention must be drawn to the District Officer's and Provincial Commissioner's office regarding this legal position and a copy of the this Ruling relayed to them.

For the purpose of this appeal, the date of the decision must therefore be the date when the award/decision was pronounced to the parties. It is common ground that this was 11.7.02. The date (7.5.02) appearing on the award is the date when the Tribunal reached its decision. It is not when the decision was pronounced. It is one thing to reach a decision, and even to put it down on paper, and it is yet another to pronounce it to the parties. If I borrow a leaf from caselaw in Civil litigation, my decision is fortified by the decision in ***Gillani's Modern Bakery versus Kunther (1954) 21 EACA 123 by the then Court of Appeal for East Africa*** in which the Court of Appeal held a judgment not to be valid where it was prepared and signed in chambers immediately after a decision was delivered orally in open court, but the written judgment was not delivered in open court. Similarly, where a Tribunal makes a decision and dates it but does not pronounce it openly to the parties until later, it is the date on which it is pronounced that is the effective date.

In the instant case, I hold that the decision of the Appeals Committee must be deemed to be 11.7.02 because this is the date when the award was pronounced. Accordingly, as time started to run from the date of the decision on 11.7.02, the appeal was not out of time when it was filed in court on 9.9.02 because the sixty (60) days period under section 8 (9) (supra) had not elapsed. The Preliminary Objection therefore fails. It is dismissed with an order that costs thereof shall be in the cause. The appeal shall be heard on a date to be fixed in the court registry.

Dated at Kakamega this 24th day of February 2006

G. B. M. KARIUKI

J U D G E