

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Misc Civ Appli 67 of 2003

NELSON MUKABANA OMUTANYIAPPLICANT

V E R S U S

JOSEPH JUMA KEYARESPONDENT

R U L I N G

Nelson Mukabana Omutanyi, the Applicant herein, made on 10-06-2003 an application by way of ex parte Chamber Summons seeking leave to appeal out of time from the decision made by the Western Appeals Committee read to the parties on 25.1.02. The application was supported by the affidavit of the applicant sworn on 2-06-03. In it, the applicant averred that he instructed his advocate to file appeal to this court on 25.1.03 but did not state when he went back to his advocates offices when he says he discovered from their unnamed clerk that no appeal had been filed. He did, however, learn on 24.5.2003 from the advocate himself that no appeal had been filed. Mr. Manyoni, learned counsel for the applicant urged the court to grant the application and contended that the applicant had a good appeal.

The application was opposed. Mr. Wainaina, learned counsel for the respondent, relied on the replying affidavit filed by his client, the respondent, sworn on 16-12-2004 and contended that there was inordinate delay in bringing the application and that, in any case, there is no provision for extension of time under Act 18 of 1990.

I have perused the application and given due consideration to the submission of both counsel. Section 8 (9) of the Land Disputes Act No.18 of 1990 ("the Act") provides that an appeal to this court may be filed within 60 days from the date of the decision complained of. The Act does not provide for extension of time where appeal is not filed within the period of 60 days. If Parliament intended to provide for extension of time, it would have done so. The Act provides for the right of appeal and proceeds to stipulate the period within which such appeal ought to be preferred. It stops there. It does not cater for possible failure to appeal in time by providing for extension of time to appeal outside the stipulated period. There would be no basis for the court to read such provision in the Act. It is for Parliament to legislate for it. But even if there was power vested in the court to grant extension of time, which there is not, the applicant has not made out a case to satisfy me that there is good and sufficient cause why appeal was not filed in time. The decision was made on 25.1.2002 but the applicant did not specify when the clerks in his advocate's office informed him that no appeal had been filed. In any case, the decision of the Provincial Appeals Committee was admittedly adopted on 10.4.2003 as a judgment of the court. The effect of the adoption was that the decision ceased to exist in a form in which it could be challenged. For these reasons, I decline to grant the orders sought. The application is hereby dismissed with costs to the respondent.

Delivered, dated and signed at Kakamega this 29th day of June, 2006.

G. B. M. KARIUKI

J U D G E