



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Misc Civ Appli 130 of 2005

NYOKABI WACHIRA
APPLICANT

VERSUS

NAOMI NJOKI
RESPONDENT

R U L I N G

Nyokabi Wachira hereinafter referred to as the applicant has come to this court by way of notice of motion brought under section 79 G of the civil Procedure Act and order XLIX Rule 5 of the Civil Procedure Rules seeking orders for extension of time within which to file an appeal against the judgment of the Central Province Appeals Committee made on the 1st November 2000.

Mr. Mbutia who appeared for the applicant has explained that he erroneously filed a Misc. civil application instead of an appeal and that the court did actually certify the appeal brought by way of a miscellaneous application as raising points of law, but that he had to withdraw the application when he realized that the procedure followed was wrong. He is not however able to file a proper appeal as time has expired hence his application for extension of time.

Mr. Mbutia contends that the applicant has a good appeal which raises weighty issues and should therefore be given a chance of being heard.

Although the applicant did not cite section 3A of the Civil Procedure Act she urged the court to invoke its inherent jurisdiction under that provision. Counsel relied on the following authorities.

- *National Industrial Credit Bank Ltd. v/s Mutinda Milimani Commercial Court HCC 1487 of 2002 .*
- *Obadiah & Others v/s Dossan & Others [1970] EA 306.*
- *Ryan Investments Ltd & Another v/s The United States of America [1970] EA 675.*

For the Respondent it was submitted that the application before the court is misconceived, defective and an abuse of the process of the court. It was contended that there was no provision in the land Disputes Tribunal Act for extension of the 60 days period given for appeals against the ruling of the Provincial Appeals Committee. It was further submitted that the reasons given for the failure to file the appeal within time were not convincing at all.

It was also submitted that the provisions relied upon by the applicant i.e. section 79 G of the civil Procedure Act and Order XLIX rule 5 of the civil Procedure Rules are not applicable as they only relate to appeals from a subordinate court to the High Court and also where time is fixed by the Civil Procedure rules or by an order of the court which was not the case herein. Finally it was submitted that the appeal lacks merit.

Having considered this application, the affidavit in support and in reply and the submissions of both counsels, I do find that there is no provision in the land Disputes Tribunal Act for extension of the 60 day period provided for filing appeals in the High Court against the decision of the Provincial land Disputes Appeals Committee. That notwithstanding, an appeal to the High Court from the Appeals Committee is a "suit" in respect of which as per section 89 of the Civil Procedure Act the procedure to be followed as far as may be applicable is the Civil Procedure Act and Rules.

I concur with the submission that section 79 G of the civil Procedure Act is not applicable to appeals emanating from the Land Tribunal and that Order XLIX rule 5 is also not applicable as the time for appeal has not been fixed under the Rules or by the Court. I am satisfied that there is no specific provision either under the Land Disputes Tribunal Act or under the civil Procedure Act and Rules for the extension of the period provided for filing appeals against the decision of the appeals committee. In such a situation Section 3A of the Civil Procedure Act would be an appropriate provision to invoke the inherent jurisdiction of the court to meet the ends of justice. In this case however, the applicant did not invoke section 3A of the Civil Procedure Act. I have further called for Nyeri HC Misc. Civil Application No. 222 of 2000 and have found that the applicant has tried to mislead this court as there is no order by a Judge certifying that points of law were raised in his intended appeal.

Moreover contrary to the contention that the miscellaneous application was withdrawn by the applicant, it is evident from the record that HC Misc. Civil Application No. 222 of 2000 was dismissed on the 10th March 2002 under Order XVI rule 6 of the Civil Procedure Rules.

The applicant has not satisfied this court that there were genuine reasons for the failure to file his appeal within time. A period of almost 6 years has elapsed since the ruling was delivered. I find no just or sufficient cause to grant the prayers sought.

The application dated 15th November 2005 is accordingly dismissed with costs.

Dated signed and delivered this 26th day of July 2006

H. M. OKWENGU

JUDGE