

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Misc Civil Appli 265 of 2004

ALBERT CHINGE WABULE.....APPLICANT

VS

FESTO MAMULI NJIULE.....RESPONDENT

R U L I N G

Pursuant to the provisions of Section 8 of the Land Disputes Tribunals Act no. 18 of 1990, the applicant, Albert Chinge Wabule sought for leave to appeal out of time against the decision of Kanduyi Land Disputes Tribunal as adopted in Bungoma S.P.M.C. LDT. Case No. 49 of 2001.

The motion is supported by the affidavit of Abert Chinge Wabule sworn on 6th October 2004. The Respondent, Festo Mamuli Njiule opposed the motion by filing a replying affidavit he swore on 27th October 2004.

The main ground raised in support of the motion is that the applicant failed to lodge his appeal in time due to mistake on the part of his previous counsel who incidentally re-located to Kisii leaving him bewildered. He also says that his appeal has high chances of success. The Respondent on the other hand says that the applicant has been indolent and his claim has been overtaken by events. The Respondent further states that the applicant has no good appeal with any hope of success having failed to annex a copy of the intended memorandum of appeal to his application. The Respondent also exhibited a copy of the register to show that he is the registered owner of the land in dispute hence the tribunal has and had no jurisdiction to handle disputes over title to land.

The annexures placed before me show that the applicant filed a claim against the respondent claiming a portion of L.R. NO. EAST BUKUSU /NORTH SANG'ALO/1141 before Kanduyi Land Disputes Tribunal on 17/7/2001 vide Land Disputes Tribunal case No. 7 of 2001.

The dispute was heard by the panel of elders who gave their verdict dismissing the applicant's claim on 5th October 2001 on the ground that the applicant had not proved his case and that the Respondent had title over the suit premises for a period of over thirty years. The dismissal order was adopted by the Bungoma Principal Magistrate's court on 9th January 2002 vide Bungoma S.P.M. L.D.T. case No. 49 of 2001.

The applicant has beseeched this court to give him leave to appeal to the provincial appeals committee out of time. He has blamed his previous lawyer for failing to appeal in time.

I have examined the annexures attached to the affidavit in support of the motion. Annexure III shows that the applicant appointed the firm of Aranga & Co. Advocates to act for him before the senior principal magistrate's court on 3.11.2003 nearly 2 years after the Tribunal's decision had been adopted. There is no evidence on record that he had appointed the aforesaid firm of advocates earlier than that date. I therefore agree with the Respondent's submission that the applicant is guilty of delay and laches.

He was indolent and he cannot therefore be assisted both in equity and in law. There was no evidence to prove mistake of counsel. At this stage I will not consider whether the intended appeal has merit or not because that is jurisdiction of the provincial appeals committee.

The remaining issue which I will express my opinion is whether this court has the discretion to extend time fixed by the Land Disputes Tribunals Act. Under section 8 (1) of the land disputes Act No. 18 of

1990 the legislature did not donate to this court any jurisdiction or discretion to extend time to appeal unlike in other civil cases emanating from subordinate courts. In my humble view this court has no jurisdiction on discretion to extend to appeal under section 8 (1) of the Land Disputes Tribunal Act. The legislature had in its mind the view that Land Disputes should be heard and determined expeditiously without involving courts.

I will and hereby do dismiss this motion with costs to the Respondent.

DATED AND DELIVERED THIS 25th DAY OF February 2005

J.K. SERGON

JUDGE