



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Misc Appli 145 of 2003

GITAHI GAKUNGA.....APPLICANT

Versus

WAMBUGU GAKUNGA.....RESPONDENT

RULING

The Applicant having filed his Notice of Motion herein dated 28th July 2003 containing five prayers, three of the last prayers excluding prayer five were struck out on 30th July 2003, leaving prayer one and prayer five only for hearing. In prayer one, the Applicant seeks orders:

“THAT the applicant be given leave to file appeal from the decision of the Provincial Lands Dispute Appeal Tribunal Nyeri No. 170 of 2002 out of time.”

Prayer five is for costs.

The problem with the Applicant is that he is not consistent in his filed documents as well as his speech. Ground (a) in the Notice of Motion therefore states that the Applicant is aggrieved by the decision of the Provincial Land Disputes Tribunal in Appeal No. 170 of 2003. The Applicant goes on to state in paragraph 2 of his supporting affidavit dated 28th July 2003 that he is lodging an appeal against the decision of the Provincial Lands Appeals Tribunal in Appeal Number 170 of 2000 and repeats the same appeal number in paragraph 3(c).

Listening to the Applicant orally addressing the court made the matter worse as the Applicant told the court he was in jail when the Appeals' Committee – correctly it is the Provincial Land Tribunal Appeals Committee, Nyeri – decided the case. He went on to say that when he came out of jail, he filed a case referred to as Award No. 4 of 2001 in the Chief Magistrate's Court at Nyeri, and that he appealed in the year 2003. He was sick. There was a card. The case was No. 145 of 2002 and that judgment in that case was delivered on 18th November 2003 by this court and that to-day 3rd March 2005 was his first time to see an advocate appearing in this matter. He said that there should be no advocate in this matter because he does not have one and that therefore the other party should not have an advocate.

Mr. Rika, Counsel representing the Respondent opposed the Applicant's application pointing out that the application has so many anomalies that at the end you cannot know what the application is for. He added that the Applicant is the one who took the Respondent to Land Tribunals and having lost the case he should not be heard now complaining that the Tribunals had no jurisdiction.

I have looked at the record before me in the light of what has been stated before me and do agree

absolutely with what Mr. Rika said. I wish to add that the Applicant having failed to appeal in time filed the Notice of Motion dated 28th July 2003 on 30th July 2003 to go and sleep for prosecution of that application to take place in March 2005. That is a clear manifestation of the conduct of a party who after filing an appeal will never prosecute it resulting into delay of justice. I hold the view that he has delayed justice sufficiently for his purpose and should no longer be permitted to cause further delay of justice. This application is not brought in good faith and the Applicant's intention is to wrongfully deny the Respondent the fruits of a judgment in the Respondent's favour.

This court should not tolerate that conduct of things and therefore the surviving prayers in the Notice of Motion dated 28th July 2003 be and are hereby dismissed.

The Applicant to pay costs of the application to the Respondent.

Dated this 11th day of March 2005.

J. M. KHAMONI

JUDGE