



**Murage v Wachira (Suing as the legal representative and administrator of the estate of Peter Wachira Kabuga) (Environment and Land Appeal E028 of 2021) [2022] KEELC 15214 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15214 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL E028 OF 2021  
JO OLOLA, J  
DECEMBER 8, 2022**

**BETWEEN**

**RACHAEL MUTHONI MURAGE ..... APPELLANT**

**AND**

**BEATRICE WATETU WACHIRA ..... RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF PETER WACHIRA KABUGA**

**JUDGMENT**

1. This matter has been presented as an appeal arising from the award of the Kieni East Land Disputes Tribunal no 7 of 1996 as adopted at the Nyeri Principal Magistrates Court Award Case no 28 of 1988.
2. From the record availed herein it is apparent that one Peter Wachira Kabuga had lodged a claim against the appellant herein – Rachel Muthoni Murage seeking to have her compelled to vacate a parcel of land described as Naromoru Block II/395. By a decision rendered on July 1, 1998, the tribunal found that the appellant did not own any land in Aguthi Ranching Company and directed her to vacate the said parcel of land in the shortest time possible to give room for the claimant to develop the land.
3. It is also apparent from the same Record of Appeal that the appellant herein did lodge an appeal against the decision of the Provincial Appeals Tribunal. In the said appeal whose number is neither disclosed nor displayed in the record, the appellant emerged victorious after the panel determined that she had already developed the land and that as a widow, she deserved to be given peace of the mind. The panel further ordered the said Peter Wachira to go back to the Aguthi Ranching Company to be given his own piece of land.
4. From a perusal of the appellant’s written submissions filed herein on April 1, 2022 it would appear that a series of events took place between the parties in regard to the piece of land including the institution



of some cases in court. Subsequently and by a Memorandum of Appeal dated July 27, 2021 and filed herein on August 13, 2021, the appellant lodged this matter before this court accusing the Kieni East Land Dispute Tribunal of having committed various errors of fact and law in the decision rendered on July 1, 1998.

5. From the onset, I was unable to discern how a decision rendered on July 1, 1998 could be a subject of an adoption order by the court in a case said to have been filed in the year 1988.
6. Secondly, I was unable to discern by what authority this appeal had been brought before this court. The claim here having been instituted before the Kieni East Land Dispute Tribunal was therefore a matter falling within the purview of the Land Disputes Tribunal Act no 8 of 1990 (now repealed). The said Act provided a mechanism for appeal to all parties aggrieved by the decisions of the said tribunals.
7. In that respect, section 8(1) of the Act granted a party aggrieved by a decision of the tribunal 30 days within which to appeal to the Appeals Committee constituted for the province in which the subject matter of the dispute was situated. Where a party was aggrieved by the decision of the Appeals Tribunal, section 8(9) of the repealed Act granted such a party 60 days within which to appeal to the High Court on a point of law.
8. Considering that the award by the Kieni East Land Disputes Tribunal was made on July 1, 1998, this appeal has arrived some 23 years late. As it is, there is no evidence that any leave of the court was sought before the appeal was filed. As it were, time limitation is a jurisdictional question and where a matter is time-barred a court has no jurisdiction to entertain the same.
9. As Kiage JA observed in *Nicholas Kiptoo Arap Korir Salat vs IEBC and 6 Others* (2013) eKLR:

“...This court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just certain and even-handed. Courts cannot aid in the bending or circumventing of rules and shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules.

I apprehend that it is through the even-handed and dispassionate application of rules that courts give assurance that there is a clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned.
10. The upshot herein is that this appeal is time-barred. It is misconceived and instituted in abuse of the court process. It is hereby struck out with costs to the respondent.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 8<sup>TH</sup> DAY OF DECEMBER, 2022.**

**In the presence of:**

Ms Nanjala holding brief for Nderi for the appellant

Ms Maina for the respondent

Court assistant - Kendi

**J O OLOLA**

**JUDGE**

