



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CIVIL CASE NO 1067 OF 2004

DAVID CHEGE NYORO (Suing as a personal

Representative of NYORO KIBANYA APPLICANT

VERSUS

HELINA WANGARI CHEGE RESPONDENT

RULING

In this application, brought under Sections 79 G and 3 A of the Civil Procedure Act, the Applicant seeks leave to file appeal out of time against the Award of the Provincial Land Disputes Appeals Committee (Central Province) made on 22nd January, 2003.

The application is supported by the affidavit of David Chege Nyoro, the Applicant, in which he attributes the delay in filing this application first to the fact that he was unaware of the delivery of the Award until 25th March, 2003, and then to the fact that he needed to obtain the Limited Grant of Letters of Administration, which was issued on 23rd May, 2003. The delay thereafter – of more than one year is unexplained.

There are two main issues here – does this Court have the jurisdiction to enlarge time for filing appeal where none has been provided for in the Land Disputes Tribunals Act of 1990; and if so, whether the Applicant has demonstrated a good and sufficient cause for not filing the appeal in time.

Section 79 G, under which this application is made, is, I believe, inapplicable because it refers and applies to appeals emanating from subordinate courts. A subordinate court is defined in the Interpretations and General Provisions Act (Cap 2) as follows:

“Subordinate court” means a magistrate’s court within the meaning of the Magistrate’s Courts Act, and a reference to a subordinate court of a particular class means a magistrate’s court of that class within the meaning of that Act”

This clearly excludes the tribunals constituted under the Land Disputes Act. So, then, where does the High Court find its jurisdiction, if any, to enlarge time for filing appeal? The Land Disputes Act itself ought to have provided the High Court the authority to extend time where appropriate. But it has not done so. Section 8 (a) of that Act prescribes the exact time within which appeals may be preferred – 60 days. It says nothing more. Mr Oonge, Counsel for the Respondent, argued before this Court that the High Court

had no jurisdiction to enlarge time with respect to appeals from the Land Disputes Tribunals Act. Mr Gitau, for the Applicant, was not particularly helpful. He relied on Section 3 A but cited no authorities.

I agree with Mr Gitau that Section 3 A could be invoked, at least in part, to give this Court the power to make orders that are necessary for the ends of justice. The omission in the Land Disputes Tribunals Act could not be taken to be the reason to limit this Court's inherent and unlimited jurisdiction. I find support in this proposition from the decision of the Court of Appeal for Eastern Africa (as it then was) in **Manibhai Bhailalbhai Patel vs Mehal Singh (C. A. No 14 of 1955)**. In that case, the issue before the Court was whether the High Court (known as "Supreme Court" at that time) had jurisdiction to enlarge time to file objection to an Award made under the Arbitration Ordinance, Cap 22, Laws of Kenya. That Ordinance prescribed a time limit of 8 weeks from the delivery of the Award to object to the same. There was no rule under the Arbitration Rules authorizing an extension of time prescribed for applying to set aside an award. In an extensive and well-reasoned Ruling and relying essentially on Sections 3 A, 89, 95 and 97 of the Civil Procedure Act, and Order 49 Rule 5 of the Civil Procedure

Rules, the learned Judges of the Court of Appeal, held that the High Court had the jurisdiction to enlarge time.

I am mindful of the fact that in the **Manibhai case**, the Court of Appeal was dealing with a rule made under the Arbitration Act (namely Rule 7 made pursuant to Section 20 of the Act), as opposed to a statutory provision here in the case before me – namely Section 8(a) of the Land Disputes Tribunals Act. However, the principles outlined by the Court of Appeal ought to apply with equal force to the facts before me, as they did with respect to a "Rule" made under the Arbitration Act. Although the Court, in the Manibhai case, did not find it necessary to invoke, or decide upon the invocation of Section 3 A of the Civil Procedure Act, I am satisfied that that Section also gives this Court the power to enlarge time with regard to the facts before this case. **Accordingly, I find that this Court does indeed have the power to enlarge time to file appeal from the Award of the Land Disputes Tribunal in appropriate cases.**

The next issue is whether the applicant has made out a case for this Court to exercise its discretion to enlarge time. As I indicated before, the Award was read on 22nd January, 2003 in the presence of both the parties – according to the Replying Affidavit sworn by the Respondent, and as is indicated in the Award. The Applicant is, therefore, not being truthful when he says that he did not know about the Award until 25th March, 2003. He then says that he had to await grant of letters of administration which he obtained on 23rd May, 2003. However, he filed this application on 11th August, 2004 – some 15 months later. This delay is inordinate, and unexplained. Litigation must come to an end. It is not fair that the Respondent should continue to be vexed and live in anxiety indefinitely. This is not the kind of case where I feel I should exercise my discretion to enlarge time, as I believe the applicant has not shown a good and sufficient cause for not filing the appeal within time.

Accordingly, this application is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 14th day of June, 2005.

ALNASHIR VISRAM

JUDGE