REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Civil Appeal 63 of 2003

MARGARET WAINUKU MAGONDU…….APPELLANT

Versus

EUNICE GATHONI MACHARIA……..…RESPONDENT

In this matter, the Appellant appealed against "the Award of the Central Province Appeals Committee No. NYERI 21/2002 EUNICE GATHONI MACHARIA – VS – MARGARET WAINUKU MAGONDU as delivered on 3 by the Karatina S.R.M.'s court on 4th April, 2003 in LDT No. 10 OF 2002."

RULING

When the appeal came before me for hearing, Mr. Muhoho, Counsel for the Respondent, raised a preliminary objection based on the Notice of preliminary objection he had filed and served dated 9th March, 2005 founded on the following grounds:

> ***"1. THE Appeal against the award of the Provincial appeals Committee dated 12th March, 2003 was filed out of the prescribed 60 days and without seeking leave of the court and is thus incompetent ab initio.***
>
> ***2. No Right of Appeal lies against the orders of the Senior Resident Magistrate Court dated 4th April, 2003 in LDT NO. 10 of 2002."***

As Mr. Gacheche Wa Miano, Counsel for the Appellant did not agree, I was subjected to a rather lengthy hearing of the objection.

Looking at grounds in the Memorandum of Appeal, they all relate to what happened in the Central Province Provincial Appeals Committee and so are the prayers in that Memorandum. But looking at the head notes as quoted at the beginning of this ruling, what happened in the Senior Resident Magistrate's Court at Karatina is included. No ground of appeal touches on what happened in that court.

The position is that after the Central Province Provincial Appeals Committee made its decision dated 12th Mach, 2003 in their case referred to as NYERI 21/2002, the same decision was subsequently filed in the Senior Resident Magistrate's Court Karatina as LAND CASE NO. 10 of 2002.

On 12th June, 2002 the court read that decision to the parties stating

: ***"Ruling read to the parties. 30 days R/A. Sgd: J. N. NYAGAH S.R.M."***

On 4th April, 2003 the matter was again before the Senior Resident Magistrate Nyaga, in the presence of both parties and he wrote:

"Ruling of the P.L.D.T.A.C. read to the parties. 60 days R/A/ Sgn: J. N. NYAGA S.R.M."

It is not clear why that court had to read the decision of the Provincial Appeals Committee to the parties as the reading could have been done by the Committee itself. Further, it is not clear why the court had to do the reading twice, first on 12th June, 2002 and later on 4th April, 2003 and on each occasion giving the parties time to appeal. Since on both occasions no judgment was entered by the court, I do assume that the learned magistrate was allowing time for an aggrieved party to appeal against the decision of the Provincial Appeals Committee.

But did the Magistrate have the jurisdiction to do so? The Land Disputes Tribunals Act does not give the magistrate's court power to fix the period within which parties who have been before a Land Disputes Tribunal or a Provincial Land Disputes Appeals Committee may appeal. The period is fixed by the Act itself. In the case of a decision by a

Land Disputes Tribunal, a party aggrieved has thirty days from the date of the decision to appeal. Section 8 (1) says:

"Any party to a dispute under Section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee- ----------"

In the case of a decision by an Appeals Committee Section 8 (9) says:

"Either party to the appeal may appeal from the decision of the appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:"

The deciding point from which to begin counting the days within which to file appeal is the date "of the decision" on both occasions. The phrase "the date of delivering the decision" is not used so that Mr. Wa Miano's decision written and dated in Chambers in the absence of the parties will still count. Indeed Rule 20 of the Land Disputes Tribunals (Forms And Procedure) Rules 1993 leaves no doubt when it says:

"At the conclusion of every dispute the Tribunal shall make a determination to be served on the persons affected by the decision-------"

That is a decision made in the absence of the parties and not read to them so that they be served with it.

In this matter therefore the sixty days allowed to the Appellant to file appeal from the decision of the Provincial Appeals Committee are counted from 12th March, 2003 and therefore this appeal was filed out of the prescribed time of 60 days on 27th May, 2003.

Concerning the order of the Senior Resident Magistrate dated 4th April, 2003, what was done on that day was mere recording the decision of the Appeals Committee and allowing the aggrieved party 60 days to appeal. I have said the magistrate had no jurisdiction to give the parties a period within which to appeal

against a decision of a Tribunal or a decision of an Appeals Committee. The order he made giving 60 days is null and void and cannot be used by the Appellant to sustain this appeal.

There being no judgment entered by the Senior Resident Magistrate's Court Karatina adopting the Provincial Appeals Committee's decision dated 12th March, 2003, there was no order of that court against which the Appellant in this matter could appeal in this appeal and I therefore find no appeal here against an order of the Senior Resident Magistrate's Court, Karatina.

From what I have been saying above, Mr. Muhoho's preliminary

objection is upheld and this appeal is hereby dismissed with costs to the Respondent.

Dated this 9th day of June, 2005.

J. M. KHAMONI

JUDGE