

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
Misc Appli 191 of 1999

SIMON NDUNGU)

JOSEPH WAWERU)
APPLICANTS

VERSUS

KANGATHIA KIUMA
..... RESPONDENT

RULING

By a notice of motion dated 19th November 1999, Simon Ndungu and Joseph Waweru hereinafter referred to as the Applicants seek leave of this court to file their intended appeal against the decision of the Land Disputes Appeal Committee dated 18th August 1999 out of time, and that the said appeal be deemed properly filed. The applicants plead that the delay was occasioned by inadvertence in their lawyer's office. They urge the court not to make them suffer for the mistake of counsel.

Mr. Mbigi who appears for the Respondent has urged the court to reject the application contending that there is no right of extension of time in an appeal against the orders of land Disputes Appeals Tribunal. He maintained that Act No. 18 of 1990 (i.e. the land Disputes Tribunal Act) sets out a special jurisdiction and does not incorporate the provisions of the Civil Procedure Rules or Act. He maintains that there is no provisions for extension of the 60 days provided for appeal under section 8(9) of Act No. 18 of 1990.

In considering an application dated 29th November 2002 by one of the applicants herein, this court noted in its ruling dated 30th April 2004, that the applicant had been unfortunate enough to land into the hands of an unconscionable advocate who was lax in filing the appeal. That remains the position herein. The applicants had entrusted an advocate to pursue the appeal. Obviously the advocate failed to perform his duties as expected. It is further apparent from the draft memorandum of appeal that the intended appeal is not frivolous but does raise substantive issues.

Having noted that the applicant is not to blame for the delay in filing this appeal within time, does the court have any jurisdiction to extend time for him to file his appeal against the decision of the Land Disputes Appeals Committee? Counsel for the Respondent submitted that the court does not have any such jurisdiction.

I concur with Mr. Mbigi, that the land Disputes Tribunal Act (18 of 1990) does not provide for extension of the 60 days period for appeal against the decision of the land Disputes Appeals Committee as provided under section 8(9) of that Act. I further agree with Mr. Mbigi that neither section 79G of the Civil Procedure Act nor Order XLIX of the Civil Procedure Rules would not be applicable as section 79G deals specifically with general appeals from the subordinate courts to the High Court in respect of which a period of 30 days is provided. Whilst Order XLIX rule 5 which deals with enlargement of time would also not be applicable as it deals specifically with situations where a limited time has been fixed under the rules or by a court order, unlike the present case where time is fixed by another Act of Parliament i.e. the Land Disputes Tribunal Act.

The applicant has however invoked the inherent powers of this court under section 3A of the Civil Procedure Act. Section 3A is a general provision which gives the court powers to make orders as may be necessary for the ends of justice to be met or to prevent abuse of the process of the court.

I do not agree with Mr. Mbigi that the Civil Procedure Act has no application. Once an appeal is referred to the High Court it is in actual fact the Civil Procedure Act and Rules that applies to that appeal.

In my considered view, this is indeed an appropriate case in which the court should exercise its inherent powers so that the ends of justice can be met by giving the applicants an opportunity to present their appeal which has been time barred due to no mistake on their part.

I do therefore allow this application and extend time to the applicants to file their appeal against the decision of the Land Disputes Appeal Committee at Nyeri dated 18th August 1999. I further order that the draft memorandum of appeal shall be deemed duly filed subject to the applicants paying the court fees within 7 days from the date hereof.

Dated signed and delivered this 19th day of July 2005

H. M. OKWENGU

JUDGE