

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Misc Civil Appli 36 of 2005

SAMUEL NGUYO WARUGONGO.....PLAINTIFF

VERSUS

JOHN KARONJI KAMAU.....DEFENDANT

R U L I N G

Samuel Nguyo Warugongo the applicant herein has come to this court under section 79G of the Civil Procedure Act and order XLIX rule 5 of the Civil Procedure Rules seeking to have time enlarged for filing appeal against the Central Provincial Land Dispute Appeals Tribunal in appeal case number 16 of 2002 delivered on 16th January 2003.

The applicants contends that He instructed an advocate Wagita Theuri to appeal against the said decision and was under the impression that an appeal had been lodged and only discovered recently that in fact no appeal had been lodged.

The applicant explains that He has been suffering ill health and that is why He entrusted the matter to an advocate. He believes that He has a good appeal and has annexed a draft memorandum of appeal.

The Respondent has filed a replying affidavit objecting to this application on the ground that there has been an inordinate delay of a period of over 2 years and that the reasons given for the delay are not convincing. The Respondent contends that the applicant is only using the advocate as a scapegoat as He has not produced any documentary evidence to prove that He did instruct the advocate. It was also contended that the applicants diabetic condition was not so serious as to prevent him from pursuing his intended appeal. Finally the Respondent contends that the intended appeal has no chances of success, Mr. Mugo who appeared for the Respondent further argued that there is no provision for extension of time under the Land Disputes Tribunal Act.

I wish to first deal with the last issue raised i.e. whether this court has power to extend time provided under the Land Disputes Tribunal Act for appeal, where there is no express provision in that Act for extension of time. In my considered view an appeal from the decision of the Provincial Land Disputes Appeals committee lies to the High Court. There are no specific provisions provided in the Land Disputes Tribunal Act governing such an appeal. The Act only provides the right to appeal within a limited time of 60 days. To this extent Section 79G of the Civil Procedure Act is not applicable to appeals brought under the Land Disputes Tribunals Act.

Order XLIX rule 5 of the Civil Procedure Rules is also only applicable:-

“where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by summary notice or by order of the court.”

The applicant is therefore not entitled to the prayers sought under the provisions which He has come. The applicant did not invoke the inherent jurisdiction of this court, a power which He could have resorted to in the absence of specific provisions dealing with his situation. The application cannot therefore stand.

Secondly, the applicant has not offered a satisfactory explanation for the inordinate delay of more than 2 years in filing his intended appeal against the decision of the Provincial Land Disputes Appeals Committee. Although He claims to have instructed an advocate “Wagita Theuri” to file the appeal, this allegation has not been substantiated.

No correspondences relating to the intended appeal have been attached nor has any evidence of payment for the services to be rendered been availed to the court. The two letters availed from “*Wagita Theuri and Company Advocates*” do not relate or refer to any intended appeal in this matter.

Although the applicant claims He was suffering ill health, there is no evidence that his condition was incapacitating or that He was admitted in hospital. I find therefore that this application is incompetent and lacks merit. It is accordingly rejected. Costs to the Respondent.

Dated, signed and delivered this 3rd day of August 2005.

H. M. OKWENGU

JUDGE