

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC. APP. NO. 63 OF 2003

PETER NJAU WAIHARO

JAMES KARIUKI WAIHARO

MUSA NDUNGU WAIHARO

MARY WAMAITHAAPPLICANTS

VERSUS

JOHN WAIHARO THERENJA.....RESPONDENTS

R U L I N G

The Applicants herein have come to this court under order L rule 1 and order XLIX rule 5 and Section 3A of the Civil Procedure Act seeking leave of this court to file their intended appeal against a ruling of the Land Disputes Tribunal out of time. The application does not state the date of the tribunal ruling, However the annexed memorandum of appeal shows that the ruling sought to be appealed against is that of the Nyeri Provincial Land Disputes Tribunal dated 15th May 2003 but the proceedings of the Provincial Land Disputes Tribunal also attached shows that the ruling was made on 15th May 2002.

As is evident from the above the application has been poorly drawn it being brought under the Civil Procedure Act instead of the Civil Proceeding rules and the order sought to be appealed against also not having been properly identified. It is also apparent that the ruling sought to be appealed against was made more that eighteen months ago. The advocate for the Applicant has explained that the delay in filing the appeal was occasioned by failure to receive copies of proceedings of the Provincial Land Disputes Tribunal in time.

Both the supporting affidavit and the body of the application, shows that the proceedings were availed on 18th July 2002 therefore there has been more than one year delay. This inordinate delay has not been satisfactorily explained. Counsel for the Respondents submitted that a similar application for leave to appeal was made by the applicants in H.C. Misc. Application No. 245 of 2002 is still pending. He has availed a copy of the application and proceedings.

This was not responded to by the applicant. I find that this application is an abuse of the process of the Court as the Applicant cannot bring the same application in another suit while the same application is pending in an earlier suit. I find further that this application has no merit as the inordinate delay has not been explained. It is accordingly dismissed with costs.

Dated, Signed and Delivered this 22 nd day of December 2003.

H. M. OKWENGU

JUDGE