

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

HIGH COURT CIVIL APPEAL NO. 103 OF 2009

KIPRONO KOSKEI.....APPELLANT

VERSUS

PHILIP M. CHUMO & OTHERS.....RESPONDENTS

RULING

The Applicants by way of a Notice of Motion brought up the application dated 13th June, 2018 seeking leave to appeal out of time against the decision of Land Disputes Appeal Committee No.48 of 2007. The applicants contends that the decision in Land Disputes Appeal Committee, Appeal No.48 of 2008 was delivered on 26/5/2009 but the date was wrongly indicated as 26/5/2008. The appeal against the said decision was lodged on 24/7/2009 which was within 60 as required by Law. The appeal was therefore made within time but the Registrar could not allow it for given the wrong dating of 26/5/2008 it appeared to had been filed out of time.

The applicant given the position urges this court to interpret the date in the decision of Appeal No.48 of 2007 and do justice without due regard to technicalities.

The Respondents opposed the application and had raised a preliminary objection to it on the grounds that the Court does not have Jurisdiction to extend time limited under Section 8(9) of the Land Disputes Tribunal Act No.18 of 1990 (Repealed). It is as well submitted by the Respondents that the application has been made 10 years after which amounts to inordinate delay and are guilty of laches. Lastly, it is contended by the Respondents that the Land Dispute Appeals Committee delivered its finding on 26/5/2008 and the Court cannot amend and or correct any part of that findings, including the date. They relied on the decisions of Nyagilo Adie'nga and Another -vs- Ayoko Adie'nga (2015) eKLR. In this one the Court said it could not have allowed the application on account of inordinate delay of over (1) year, in lodging the application. The other case is of Esther Tala Chebiegon -vs- Kiplagat Arap Biator (2005) eKLR, in which Justice Kimaru observed that the 60 days right of appeal envisaged under Section 8(9) of the Land Disputes Tribunal Act, has no allowance for extension of time beyond 60 days. The last case is of Duncan Muchina Gachuri and 3 others -vs- Dadson Macharia Gachuri and 2 others, where the Court made a finding that the Court has no Jurisdiction to extend time fixed by statute and where the legislature did not donate the discretion to the Court to do so.

Having weighed the facts and the law applicable on the raised issues, I do find that the Court cannot ignore an apparent error on record as justice would demand that the Court considers the correct position and make a finding that serves the ends of justice. This is why Article 159(1)(d) of the Constitution states that Justice shall be administered without undue regard to procedural technicalities. There is no dispute that the decision intended to be appealed against was delivered on 26/5/2009 and not 26/5/2008 as dated.

The appeal against it, lodged on 24/7/2009 was therefore within the allowed 60 days. However, what forms the Achilles' heel in the applicant's application is that the Notice of Motion was filed on 13th June, 2018. They have waited for 9 years to bring up the application since filing the appeal. Surely the delay is inordinate and are guilty of laches. On the ground the application is unmerited and is accordingly dismissed with costs to the Respondents.

Dated and Delivered at Eldoret this 12th day of March, 2019

S. M. GITHINJI

JUDGE