



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC MISC. APPL. NO. 25 OF 2016**

**(Formerly Nyeri HCC No. 233 of 2010)**

**GERALD MWANGI KAGURIA**

**Alias MWANGI KABURIA ..... APPLICANT**

**-VERSUS-**

**THE BOARD OF GOVERNORS ST. MARY**

**KARUTHI SEC. SCHOOL..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. On **22<sup>nd</sup> December, 2010** the applicant herein filed the notice of motion dated **21<sup>st</sup> December, 2010** seeking extension of the time within which he ought to have filed an appeal against the decision of the Chief Land Registrar delivered vide a notice dated 27<sup>th</sup> October 2010.
2. The application is premised on the grounds that by the time the applicant received the decision sought to be appealed, the time provided for in law for lodging an appeal against the decision had already lapsed (notice was dated 27<sup>th</sup> October 2010 and was received on 2<sup>nd</sup> December, 2010); that the intended appeal raises serious issues and that he is not to blame for failure to file the appeal within the time provided for in law.
3. The motion is opposed on the grounds that it is misconceived; frivolous, vexatious, fatally defective and an abuse of the process of the court; that this court lacks jurisdiction to hear and determine it; that it contravenes the provisions of **Section 21(4)** of the Registered Land Act (RLA), Cap 300 Laws of Kenya (now repealed), is statute barred, fatally incompetent and incurably bad in law.
4. Further, that it contravenes the provisions of **Sections 3 and 8** of Land Disputes Tribunals Act, LDTA (now repealed) and that the respondents will suffer prejudice and unfair administrative action if the application is heard and determined as filed.
5. When the application came up for hearing directions were taken to the effect that the application be disposed of by way of written submissions.

6. Despite the parties to this application having been accorded ample opportunity to file their submissions, at the time of writing this ruling, only the applicant had filed his submissions.

7. In the submissions filed on behalf of the applicant, it is pointed out that the applicant who was dissatisfied by the decision of the Land Registrar concerning a dispute he had referred to his office for determination, upon advice given by the Land Registrar, appealed to the Chief Land Registrar.

8. Arguing that the issue for determination in this matter is whether or not the applicant is to blame for the delay in filing the appeal against the decision of the Chief Land Registrar, the applicant explains that the delay was occasioned by delay in receipt of the decision of the Chief Land Registrar in time.

9. Concerning the contention that the application offends the provisions of the LDTA, it is submitted that the applicant cannot be said to have contravened that law because he invoked the provisions of the RLA to solve the issue.

10. According to the applicant, it is only this court which can solve the dispute between him and the 1<sup>st</sup> respondent.

### **Analysis and determination**

11. From the pleadings filed in this matter, the issues for determination are:

- a) Whether this court has jurisdiction to entertain this application?
- b) Whether the application is incompetent, bad in law and/or fatally defective?
- c) Whether the applicant has made up a case for being granted the orders sought?

12. On whether this court has jurisdiction to entertain the application, upon reading and consideration the provisions of **Section 3** and **3A** of the Civil Procedure Acts (CPA) as read with the provisions of **Order 50 Rule 6** of the Civil Procedure Rules (CPR), I hold the view that in exercise of the power donated to this court under **Section 3A** of the CPA, this court has power to entertain the application for purpose of doing justice to the parties.

13. As to whether the application is incompetent, bad in law and/or fatally defective, upon review of the law applicable to the subject matter of this suit, to wit appeal against the decision of the Land Registrar, I find as a fact that the appeal lies as a matter of law to the Chief Land Registrar and from the Chief Land Registrar to this Court. In this regard see **Section 150** of RLA (now repealed), which provides as follows:

**“150. (1) If a person is dissatisfied by the refusal of the Deputy Chief Land Registrar, a Land Registrar or an Assistant Land Registrar to effect or cancel any registration, he may, within thirty days of the refusal, appeal in the prescribed form to the Chief Land Registrar, and the Chief Land Registrar may direct that the registration be effected or cancelled, as the case may require, or may uphold the refusal.**

**(2) The Minister or any person aggrieved by a decision, direction, order, determination or award of the Chief Land Registrar may, within thirty days of the decision, direction, order, determination or award, give notice to the Chief Land Registrar in the prescribed form of his intention to appeal to the High Court against the decision, direction, order, determination or award.**

**(3) On receipt of a notice of appeal, the Chief Land Registrar shall prepare and send to the Court and to the appellant, and to any other person appearing to him from the register to be affected by the appeal, a brief statement of the question in issue.**

**(4) On the hearing of the appeal, the appellant and the Chief Land Registrar and any other**

**person who, in the opinion of the Court, is affected by the appeal may, subject to any rules of court, appear and be heard in person or by an advocate.**

**(5) The Court may make such order on the appeal as the circumstances may require, and every such order shall be given effect to by the Chief Land Registrar.**

**(6) The costs of the appeal shall be in the discretion of Court.**

14. In the circumstances of this case, in exercise of the right donated to him under **Section 150** of the RLA (repealed) (the law applicable to the application by dint of the provisions of **Section 107** of the LRA, 2012), the applicant appealed to the Chief Land Registrar in good time.

15. Upon receipt of the appeal, the chief land registrar wrote to the applicant advising him to appeal to the High Court in accordance with the Law.

16. According to the applicant, by the time he got seized of the decision of the chief land registrar, the time within which he ought to have appealed to this court had already lapsed necessitating the filing of the current application for extension of time within which he ought to have filed an appeal to this court.

17. From the pleadings and evidence adduced in this matter, I note that the applicant's contention that he received the decision of the chief land registrar after the time he ought to have lodged an appeal to this court is not denied or controverted. For that reason and because there was no inordinate delay

in lodging the application for extension of the time within which the applicant ought to have filed an appeal to this court, I am satisfied that the applicant has made up a case for extension of the time within which he ought to have filed an appeal against the decision of the chief land registrar.

18. As the obligation to frame the issue for the court's determination based on the appeal vested with the chief land registrar, I direct the applicant to within 30 days of this ruling lodge his notice with the chief land registrar for framing of the issue for consideration in accordance with **Section 150(3)** of the RLA (repealed).

19. The costs of the application shall abide the outcome of the appeal.

**Dated, signed and delivered in open court at Nyeri this 14<sup>th</sup> day of February, 2018.**

**L N WAITHAKA**

**JUDGE**

Coram:

Ms Mwangi h/b for Mr. Kiminda for plaintiff/applicant

N/A for the respondents

Court assistant - Esther