



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KITALE**  
**MISC. CIVIL APPLICATION NO. 8 OF 2014**

**MUGEIYOT FARM DIRECTORS**

**JACOB KIBITOK BIRECH**

**DANIEL KIMARU A. MARITIM**

**BENJAMIN KIPROP ARAP KOECH**

**KIPKASIO ARAP KETER.....APPLICANTS**

**VERSUS**

**THEOPHILLUS KIPSANG LELEI.....RESPONDENT**

**R U L I N G**

1. This is a ruling in respect of a notice of motion dated **27/1/2014**. This matter was filed in the High Court though it ought to have been filed in the Environment and Land Court. It remained unprosecuted in the High Court for one reason or another until the same was brought before the Environment and Land Court in 2016.
2. The applicants are seeking leave of the court to file an appeal against the decision of the Rift Valley Provincial Land Disputes Committee out of time. The applicants contend that they failed to file the appeal due to an honest mistake which arose on a wrong assumption as to when time started running.
3. The applicants further contend that they had filed an appeal against the decision of the Rift Valley Land Disputes Appeals Committee dated **3/8/2010**. All the preliminaries pertaining to the appeal were carried out but the appeal was withdrawn on a technicality.
4. The application is opposed by the respondent based on grounds of opposition dated and filed in court on **10/2/2015**. The respondent contends that the Environment and Land Court Act which commenced on **30/8/2011** repealed the **Land Disputes Tribunal Act No. 18 of 1990** and that therefore the applicants right of appeal was taken away by Parliament and therefore the application is incompetent. That no fresh action or appeal can be entertained.
5. I have carefully considered the applicants' application as well as the objection thereto by the respondent. The decision of the Rift Valley Provincial Land Disputes Committee was given on **3/8/2010**. By dint of the provisions of **Section 8(9)** of the **Land Disputes Tribunal Act No. 18 of 1990 (Now repealed)**, any party aggrieved with the decision of the Appeals Committee was free to appeal against the

decision of the Appeals Committee to the High court on a point of law within **60 days**.

6. A look at the annexures to the application shows that the decision of the Appeals Committee was forwarded to the lower court and the same was adopted as the judgement of the court on **9/12/2010** vide ***Kitale CMC Land Case No. 17 of 2010***. The parties were then given a right of appeal within **60 days**. The repealed Act never provided for adoption of the decision of the Appeals Committee. This is unlike the decision of the Land Disputes Tribunal which was to be filed in the court and judgement entered according to the decision of the Tribunal. This notwithstanding I have to decide whether the applicants have given sufficient reasons why they should be allowed to file their appeal out of time.

7. There is no contention that the applicants had filed an appeal. The appeal which had been filed was filed on the basis that time started running from **9/12/2010** when the magistrate adopted the decision of the Appeals Committee. This appeal was withdrawn after a preliminary objection was raised by the respondent.

8. There has been confusion surrounding the proceedings under the repealed Act. The practice has been that a matter is heard by the Tribunal or the Appeals Committee and once concluded, the verdict is sent under confidential cover to the lower court where the parties are then invited to come for the decision. The Tribunal or Appeals Committee never used to pronounce their verdict to the parties. Their decisions were dated and then sent to the lower court where the parties were to know the verdict for the first time. It would therefore be absurd to expect time to start running before the parties know the decision.

9. In the instant case, even though the repealed Act never expressly provided for the procedure regarding the decisions from the Appeals Committee, the practice has routinely been that such decisions are sent to the lower court and have been handled in the same manner the decisions from the Tribunals were handled. This has been so because there is no way one could execute the decision of the Appeals Committee without the same being filed in court and a decree extracted in accordance with the verdict of the Appeals Committee.

10. The above being the case I do not think that the preliminary objection which scared the applicants into withdrawing their appeal would have succeeded. However be that as it may, I have to decide the application on its merits. The proviso to ***Section 79 G of Civil Procedure Act*** provides that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

11. In the instant case, the applicants have demonstrated that they filed an appeal only that the same was withdrawn after a preliminary objection was raised by the respondent. The reason why the appeal was filed out of time is because of the confusion surrounding the provisions of the repealed Act as expounded hereinabove. In the case of ***Pan African Paper Mills (EA) Ltd -vs- Olaka (2001) KLR 8***, Justice Okubasu Judge of Appeal quoted with approval a holding from the case of ***Leo Sita Mutiso -vs- Rose Hellen Wangari Mwangi in Civil application No. NAI 255 of 1997*** unreported where the Court of Appeal observed as follows:-

**“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which courts take into account in deciding whether to grant an extension of time are: - first; the length of the delay, secondly, the reason for the delay, thirdly; (possibly) the chances of the appeal succeeding if the application is granted, and fourthly; the degree of prejudice to the respondent if the application is granted.....”.**

12. The applicants have shown sufficient reasons why they did not file the appeal in time. Mr. Kiarie in his submissions argued that Parliament had taken away the right of appeal from the applicants following the repeal of ***the Land Disputes Tribunal Act No. 18 of 1990***. It is true there were no proceedings pending before the Appeal Committee as at the time the Act was repealed. The transitional provisions under ***Section 30*** of the Environment and Land Court Act provided for the manner in which pending cases were to be heard. The repeal of the Act did not however take away the applicants right to appeal.

The applicants were past the committee stage. Their remedy lay in the High Court and if they have shown that there was reason why they did not file their appeal in time, they should be afforded the opportunity. It cannot be argued that the repeal of the Act removed their right of appeal.

13. For the reasons given hereinabove, I find that the applicants' application is well merited. I allow the same with the result that the applicants are granted leave to file their appeal within **21 days** from the date of this ruling. The applicants shall have costs of this application.

It is so ordered.

Dated, signed and delivered at Kitale on this **20th** day of **January, 2017**.

**E. OBAGA**

**JUDGE**

**In the presence of M/S Mufutu for respondent and**

**Court Assistant – Isabellah.**

**E. OBAGA**

**JUDGE**

**20/1/17**