



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

**AT NYERI**

**ELC CIVIL APPEAL NO.13 OF 2015**

**GIDEON MWANGI CHEGE ..... APPELLANT**

**-VERSUS-**

**CHRISTOPHER NDERITU CHEGE.....1<sup>ST</sup> RESPONDENT**

**SIMON NDUGU CHEGE ..... 2<sup>ND</sup> REPENDENT**

**JUDGMENT**

**Introduction**

1. This appeal is in respect of an award of the Central Provincial Land Disputes Appeals Committee (hereinafter referred to as the Appeals Committee). The award was made on 26<sup>th</sup> July, 2000.

2. Through that award, the Appeals Committee found the suit property to wit LR No. Nyeri/Watuka 979 and the subdivisions in respect thereof, to be family land and proceeded to award it as follows:

|                                  |                    |
|----------------------------------|--------------------|
| <b>Gedion Mwangi Chege</b>       | <b>-7.5 acres</b>  |
| <b>James Wokabi Chege</b>        | <b>-5.0 acres</b>  |
| <b>Tabitha Wanja Chege</b>       | <b>-1.0 acre</b>   |
| <b>Christopher Nderitu Chege</b> | <b>-3.0 acres</b>  |
| <b>Simon Ndugu Chege</b>         | <b>-3.0 acres.</b> |

3. Besides allocating the suit property as indicated above, the Appeals Committee requested the Executive Officer Nyeri Principal Magistrate's court to facilitate the allocation and issuance of relevant documents.

4. The court record shows that the appellant who was aggrieved by the decision of the Appeals Committee failed to file an appeal within the time stipulated in law. In this regard see the ruling of **Ombwayo J.**, delivered on 11<sup>th</sup> December, 2014 in respect of the appellant's application dated 14<sup>th</sup> August, 2000. Vide that application; the appellant urged the court to *inter alia* certify that his intended appeal raised an issue of law and to allow him file the intended appeal out of time.

5. Upon considering the application and the issues raised therein, the presiding judge (**Ombwayo J.**)

stated:

**“I have looked at the Notice of Motion dated 14/8/2000 and considered the submission of the applicant and Mr. Karweru. I have also perused the record herein and do find that there is no appeal on record. The applicant’s case is not commenced by way of a Memorandum of Appeal but by Notice of motion on which a Memorandum of Appeal is attached. The prayer in the notice of motion in summary seek for an order that the court certifies that an issue of law is “involved in the attached appeal” and the applicant be granted leave to file the “same”.”**

6. The judge further stated:

**“...Though Justice J.V.O Juma as he then was dismissed “the appeal” as raising no point of law, and justice Sergon exercised his discretion by giving the applicant an opportunity to pursue “his appeal” by allowing the amended motion and setting aside the order by Justice Juma rejecting the “applicant’s appeal” and restoring “the appeal” and therefore allowing the parties to fix the motion dated 14/8/2000 for hearing *inter partes*, I do find that the two decisions were made in error as the applicant had not filed an appeal. If the applicant had filed an appeal he could either have disclosed to this court the Appeal or shown the court the receipt he was issued when he paid the court fees for the appeal. I do find that the applicant has not filed an appeal.**

**There being no appeal, it would be an academic exercise to go into the merits of an appeal and therefore the court has no power to grant the application sought without an appeal. The same is dismissed with cost.”**

7. Following dismissal of his application and despite the fact that through its decision the court impliedly dismissed his application for leave to file his appeal out of time, the appellant without leave of the court filed the instant appeal (the appeal was filed on 20<sup>th</sup> April, 2015) challenging the decision of the Appeals Committee on the grounds that he was not accorded an opportunity to call his witnesses; that he was not accorded an opportunity to cross examine the respondents’ witnesses; that the Appeals Committee failed to call a crucial witness (the Settlement Fund Trustee Officer) who would have assisted it to establish the truth concerning the matter in issue; that the Appeals Committee erred by failing to find that no trust existed over the land because it was not clan land and that the Appeals Committee erred by failing to take into account that the dispute preferred to it concerned title to land over which it heard no jurisdiction to hear and determine.

8. Following issuance of directions to the effect that the appeal be disposed of by way of written submissions, parties to the appeal filed submissions which I have read and considered.

9. In his submissions filed on 3<sup>rd</sup> February, 2017 the appellant has submitted that the Land Dispute Tribunals established under the Land Disputes Tribunals Act, No.18 of 1990 (now repealed) did not have jurisdiction to entertain a claim on ownership of land as was the case in the instant appeal. Terming the award of the Appeals Committee null and void, the appellant urges the court to set aside that award.

10. On their part, the respondents, through the submissions they filed on 21<sup>st</sup> March 2017, urge the court to strike out the appeal on the grounds that it has been filed out of time, that the appellant did not obtain the leave of this court to file the appeal out of time and that there has been inordinate delay in filing the appeal (a delay of over 15 years).

11. Terming the appeal an afterthought, the respondents contend that the decision appealed from has been complied with and that the appellant has not discovered any new matter to warrant an appeal. The appellant is also accused of having failed to pay costs awarded to the respondents in the previous proceedings.

12. In view of the foregoing, the respondents urge the court to dismiss the appeal with costs to them or

to order the applicant to give security for the appeal before proceeding with the appeal.

### **Analysis and determination**

13. As pointed out herein above, the appellant through the application referred to in the decision of **Ombwayo J.** reproduced herein above, sought leave of the court to file his intended appeal out of time.

14. Although the judge did not explicitly address the question of leave to file the appeal out of time, by dismissing the appellant's application in its entirety, it can be inferred that the judge refused the appellant's plea for leave to file the intended appeal out of time.

15. Despite his plea for leave to file his appeal out of time having been refused and/or denied, without first moving the court for review of the refusal to allow him to file the intended appeal out of time and in disregard of the applicable procedural laws, the appellant went ahead and filed the current appeal.

16. As pointed out in the respondents' submissions, the appellant was under a legal obligation to file his appeal within 60 days from the date of the award of the Appeals Tribunal.

17. The evidence adduced in this case shows that owing to various procedural flaws/omissions on the part of the appellant, no appeal was filed by the appellant within the time stipulated in law. Similarly, the applicant did not obtain leave of the court to file his appeal out of time.

18. Whereas the court record shows that the appellant has all along been determined to have the decision of the Appeals Tribunal overturned or set aside, the evidence on record shows that all his attempts, including the instant one, have been vitiated by procedural lapses. For instance, concerning the instant appeal, the appellant filed it out of time without leave of the court. To make the matters worse, the evidence on record shows that his plea for leave to file the appeal out of time was denied by a court of concurrent jurisdiction.

19. Since the decision of the court dismissing the appellant's application for leave to file his intended appeal out of time was neither appealed from nor set aside and this not been an application to set aside the refusal of the leave to file the appeal out of time, I find the instant appeal, though premised on sound legal principles and raising issues which are in my view germane, to be bad in law and dismiss it with costs to the respondents.

20. Orders accordingly.

**Dated, signed and delivered in open court at Nyeri this 4th day of October, 2017.**

**L N WAITHAKA**

**JUDGE**

In the presence of:

N/A for the appellant

N/A for the respondents

Court assistant - Esther