



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**MISC. APPLICATION NO. 12 OF 2015**

**ROMAN NGELECHEI.....APPLICANT**

**VERSUS**

**JAMES KORIR.....RESPONDENT**

**RULING**

Roman Ngelechei (**hereinafter referred to as the applicant**) has brought this application against James Korir (**herein referred to as the respondent**) for orders that this Honourable court be pleased to enlarge time for appeal against the decision of the Land Registrar, Nandi County Mr E. A. Odero dated 6.9.2012. The application is made on the grounds that the applicant was not aware when the decision was made and that it took a long time to obtain a certified copy of the decision. Lastly, that the applicants appeal is meritorious. In the affidavit sworn on 21/4/2015 the applicant states that he is the proprietor of the land parcel known as Nandi/Kaptel/1734 whilst the respondent is the proprietor of the land parcel known as Nandi/Kaptel/1735. That he did lodge a boundary dispute case with the Land Registrar Nandi County on 6th February, 2012 in respect of the two parcels of land.

The boundary dispute summons were issued on the 17th August, 2014 for hearing on 6th September, 2012 and upon hearing the parties, the Land Registrar was to give a decision which he kept on inquiring as to the date. In March, 2015, he learnt that the decision in respect of the dispute had been made on 6th September, 2012. He is aggrieved by the decision and would wish to pursue an appeal however, the period for appealing is long past. He seeks extension of time to enable him appeal as the decision was delivered in his absence.

The respondent filed a replying affidavit wherein he states that he is the registered owner of the land parcel number Nandi/Kaptel/1735 which he bought from the applicant. The original title number was Nandi/Kaptel/1166 which after sub-division yielded Nandi/Kaptel/1735 and Nandi/Kaptel/1734 retained by the applicant. The land was surveyed in 1997 and he took over his portion by fencing it off and the applicant retained the remainder. In 2012, the applicant claimed that the boundary between the two parcels of land was incorrect and that the respondent was occupying a portion in excess of 3 acres sold to him by the applicant. The applicant lodged a boundary dispute with the Registrar of Lands, Nandi County who set the dispute for hearing at the site and visited the disputed boundaries on 6.9.2012 and summoned him and the applicant to attend. Indeed on 6.9.2012, the Registrar, the surveyor, himself and the applicant together with other witnesses attended the hearing at the disputed boundary as may be seen from proceedings presented by the applicant in support of the application and after hearing all the witnesses, the Registrar with the surveyor re-surveyed the land to establish the boundary. It was found that there was no encroachment of the boundary and it was correctly placed between the two parcels of land.

That it was then that the Registrar delivered his verdict at the site to all of them present including the applicant giving any party aggrieved of the decision 60 days within which to appeal. Both parties were advised to pick copies of the proceedings and the decision from the Registrar's office during working days and on his part, he picked his on 2.10.2012. It is therefore, not true as alleged by the applicant that he was not aware of the Registrar's verdict as the same was delivered on the same day the dispute was heard and in his presence. The applicant has not shown any evidence of request for certified copies of the proceedings and verdict that he made to the Registrar immediately after the dispute was heard or at all. The applicant was represented by an advocate who could have easily obtained proceedings from Registrar. That there is no good reason advanced by the applicant for the extension of time as sought. That the application has been brought after an undue and inordinate delay. A diligent person

could not have waited for 3 years to know of a decision made over a dispute heard on 6.9.2012. That in fact after the decision was made, the Registrar authorized him to put up his fence a fact he did immediately, a fact which the applicant witnessed and has always known. The applicant is feigning ignorance of the decision in order to perpetuate his baseless claims over his land when in fact he has sold his portion to a third party who is exerting pressure on him for more land, a fact which was also observed by the Registrar.

In the supplementary affidavit, the applicant states he could not appeal without a certified copy of the decision and which became available in March, 2015 and that it is clear from the proceedings that the Land Registrar never informed him that he was entitled to apply for the proceedings hence the claims by the respondent that the Land Registrar informed the parties is false. The record indeed shows that the Land Registrar failed to comply with the requirements of fair administrative action as he never gave him an opportunity to cross-examine the respondent while the latter cross examined him. The proceedings by the Land Registrar were a nullity for want of compliance with the requirements of fair administrative action as he was not accorded an opportunity to cross-examine Benard Korir, the respondent's witness. The proceedings only indicate that any aggrieved party was to file an appeal but the place where the appeal was to be filed is not indicated. The delay is not unreasonable as it was occasioned by the lapse by the Land Registrar to comply with fundamental procedural requirements as to informing him regarding his right of appeal. That his advocate was not present during the hearing as he was never served which would vitiate the proceedings.

In a supplementary affidavit, the respondent produced a receipt from Lands office showing that the applicant applied for the ruling on 23.9.2012 and therefore, he was aware that the ruling was delivered.

The applicant submits that the decision subject of appeal was made under Land Registered Act, 2012. There is no time limit under the Act for one to lodge an appeal against the decision of the Land Registrar. He relies on the provision of section 58 of the Interpretation and General Provisions Act Cap 2 Laws of Kenya and section 3A of the Civil Procedure Act Cap. 2, Laws of Kenya which provides that where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises. He argues that he became aware of the decision in the year, 2015. He also confirms that the proceedings were not supplied in time.

The respondent submits that the Registrar made a visit on the site on 6.9.2012 and heard parties as may be seen from the proceedings. He also made a determination on the dispute and each party was given an opportunity to lodge an appeal within 60 days if aggrieved of the decision. The respondent submits that the decision was read to the parties the same date the dispute was heard. It was only the typed copy of the decision that the parties were to obtain later. He annexed a copy of the receipt issued to the applicant when he applied for a certified copy of the ruling.

I have considered the submissions by parties and do find that the dispute herein was heard promptly by the Land Registrar and a decision made on the same date. The applicant was given 60 days to appeal which was adequate to enable him obtain the proceedings. *it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any special circumstances that can enable the Court to exercise its discretion in favour of the applicant. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court. A party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis. Where there is a reasonable cause for the delay, the same should be expressed to the satisfaction of the Court. The applicant should demonstrate that no prejudice will be suffered by the respondent if extension is granted.*

The applicant claims that he got a copy of the decision in 2015. I have looked at the copy of the proceedings and decision and do find that it was delivered on 6.9.2012 and certified on the 2.10.2012. Time begins running when the ruling is delivered by the Land Registrar, thus, on 6.09.2012. There is a

delay of approximately 2½ years which has not been properly explained. The fact that the ruling was delivered immediately on the date the dispute was heard and that the certified copy of the ruling was ready by the 2/10/2012 is indisputable. The applicant cannot convince this court that he waited for the **copy** of the ruling for more than two years. I do find that the delay herein is unreasonable, inordinate and any grant of orders of extension of time will be prejudicial to the respondent as he has already executed the order of the registrar and therefore the application is dismissed with costs.

**DATED AND DELIVERED AT ELDORET THIS 1ST DAY OF APRIL, 2016.**

**ANTONY OMBWAYO**

**JUDGE**