



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**ENVIRONMENT AND LAND COURT**  
**CIVIL APPEAL NO.62 OF 2011**

**JOHN KARANJA MUCHOKI.....APPELLANT**

**VERSUS**

**PAUL NJUGUNA MUCHOKI.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. On 15<sup>th</sup> March, 2011 the appellant **John Karanja Muchoki**, brought an application before the lower Court, seeking leave to file an appeal out of time against the decision of the **Maragwa Land Disputes Tribunal**.
2. The lower court dismissed the appellant's application on the grounds that:-
  - (i) **It did not have jurisdiction to grant the orders sought;**
  - (ii) **No convincing reason was given for the applicant's failure to file the appeal within the time provided by law;**
  - (iii) **The applicant was represented by advocates in the previous applications;**
  - (iv) **That what the advocates did on behalf of the applicant was binding on him.**
3. Aggrieved by the decision of the lower court, the appellant filed the appeal herein on the grounds that;
  - (i) **The learned Magistrate erred in law and fact by dismissing his appeal which he contends had good and valid grounds on merit**
  - (ii) **That the learned Magistrate erred in law and fact by delivering a ruling that had no legal or sound basis in law**
  - (iii) **That the learned Magistrate failed to properly and judiciously exercise her discretion as required and authorized by law**

**(iv) That the learned Magistrate denied him his right of access to justice in accordance with the law**

**(iv) That the decision of the learned Magistrate was completely against the weight of evidence adduced before him.**

4. The appeal was disposed of by way of written submissions.

5. In the submissions filed on behalf of the appellant, a brief background of the circumstances leading to the filing of the appeal is given and the court is urged to allow the appeal with costs.

6. In the submissions filed on behalf of the respondent, the appeal is said to be hopeless, lacking in merit and a waste of time. The award of the tribunal which was the subject of the proceedings before the lower court is said to have been a consent judgment and that the lower court was right in finding that it had no jurisdiction to extend time to file the intended appeal.

### **Analysis and determination**

7. There is no doubt that the appellants' intended appeal to the Nyeri Provincial Appeals Committee raises weighty matters of law. That notwithstanding, it is important to point out, on the onset, that the issue raised before the lower court was purely a question of law to wit, whether the lower court had power/jurisdiction to grant the orders sought. I say this because the evidence on record shows that the appellant was the registered proprietor of the parcel of land and that the tribunal conferred upon itself power it did not have by determining the question of entitlement to registered land.

8. Be that as it may, I reiterate the issue which the lower court was called upon to determine; whether it had jurisdiction to extend the time within which the appellant ought to have filed an appeal against the decision of the Maragwa Land Disputes tribunal.

9. The question which the lower court was called upon to determine has been the subject of determination in many cases. For instance, in the case of **Esther Tala Chebiegon v. Kiplagat Arap Biator** (2005) eKLR **Kimaru J.** stated:-

**“... I am inclined to agree with the submissions made by the respondent. The procedure as provided by the Land Dispute Tribunal Act excludes any provision related to extension of time. The applicant cannot import the Civil Procedure Rules into a specific procedure provided by the Land Disputes Tribunal Act and purport to seek extension of time. In my mind, the applicant can only invoke the jurisdiction of the court where there is no specific law governing the situation. In the instant case, the Land Disputes Tribunal Act has excluded provisions for extension of time. I agree with the respondent that Parliament knew that it could have provided for extension of time in the Land Disputes Tribunal Act but in its wisdom choose not to include it. This court cannot import provisions of the law where none exists. In the circumstances of this case, much as I may sympathize with the applicant, the law is clear; an aggrieved party to the decision of the Provincial Appeals Tribunal has to file the appeal within sixty days as provided by Section 8(9) of the Land Disputes Tribunal Act. No extension of time is envisaged by the Act for a party, who for some reason does not file an appeal within sixty days.**

**For the above reasons, the preliminary objection has merit. The same is upheld.”**

10. Similar sentiments were expressed by **Makhandia J.**, (as he then was) in the case of **Muigai Muthania V. Teresia Waithera Gitau** (2009) eKLR where the judge held:-

**“...The time within which an appeal from the decision of the provincial Land Disputes Appeal Committee to the High Court has been provided for under *section 8 (9)* of the Land Disputes Tribunals Act. However there is no provision for extension of time. As correctly**

**observed by Waweru J. in Joseph Njoroge Thairu & Anor. V Stephen Kiongo Kairu & Anor. Misc. Appl. No.403 of 2005**

**“.....where a time is limited by statute for the taking of any action or proceedings, unless the same statute or other statute or subsidiary legislation donates to the court power to extend that time, the court does not have any inherent power to extend time I so find. Therefore, Section 3A of the Civil Procedure Act has not been properly invoked....”**

Those too are my views in the circumstances of this case.

11. In the case of **Duncan Muchina & 3 Others V. Dadson Macharia Gachuri & 2 others**; Nyeri H.C Miscellaneous Application No.260 of 2009 (2010) Eklr:-

**“The court has no jurisdiction to extend time fixed by statute where the legislature did not donate the discretion to the court to do so.”**

12. The Land Disputes Tribunals Act and its rules make no provision for extension of time by the Land Disputes Tribunals or a court of law or anybody else. That being the case, it is difficult to imagine that anyone could revert to the provisions of the Civil Procedure Act and the rules made thereunder as the appellants purported to do.

13. In view of the foregoing, I am not going to reinvent the wheel on this issue. Like the judges in the cases cited above, I find the appeal herein to be without any basis in law and dismiss it with costs to the respondent.

**Dated, signed and delivered in open court at Nyeri this 9<sup>th</sup> day of March 2015.**

**L N WAITHAKA**

**JUDGE**

**In the presence of:**

Paul Njuguna Muchoki – appellant

No appearance or the appellant

Lydia – Court Assistant