



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, MUSINGA & MURGOR JJA)

CIVIL APPEAL NO. 6 OF 2014

BETWEEN

THOMAS ANZEZE MUSILA.....APPELLANT

AND

SAMSON MUSILA JALENGA.....RESPONDENT

(Appeal from the judgment/decree of the High Court of Kenya

at Kakamega (Thuranira, J.) dated 18th December, 2012

in

Kakamega H.C.C.A No. 95 of 2007)

JUDGMENT OF THE COURT

In this appeal, the appellant seeks to set aside the judgment of the High Court which struck out the appellant's appeal from the decision of Provincial Appeals Committee for the reason that it had been filed out of time.

The appeal to the High Court arose from a decision of the Western Provincial Appeals Committee, which confirmed the decision of the Sabatia Land Disputes Tribunal, which had ordered that **L.R Kakamega/Viyalo/1 (the disputed property)** be divided equally between the appellant and the respondent. The appellant was aggrieved by the decision of the Appeals Committee and appealed to the High Court.

The High Court observed that, there were various anomalies in the Land Tribunal's decision including, lack of jurisdiction of the Tribunal to cancel titles and to subdivide land, and that the Tribunal was improperly constituted comprising of 6 members instead of 3 as prescribed by law. In addition to that finding, the High Court found that the appeal from the Appeals Tribunal had been filed out of time. On those two grounds, the High Court, struck it out.

Dissatisfied with the decision of the High Court, the appellant has filed an appeal to this Court on the grounds that, the learned judge fell into error when she failed to consider that that appellant was the registered owner of the disputed property and wrongly concluded that the record of appeal was

incomplete and misleading without citing any specific shortcoming in the record.

In his submissions, the appellant who appeared in person contended that the suit property which belonged to his father, was later transferred to him. When his father died, his brother, the respondent, took over the disputed property, transferred it and begun selling portions thereof. The appellant's complaint was that he was the registered proprietor of the disputed property, but that the title was misplaced. The appellant's further complaint was that the High Court took into consideration matters that were not relevant to the land in question.

There was no appearance for the respondent despite the fact that his counsel had been served with the hearing notice on 7th September 2015.

We have considered the record comprising the inadequate pleadings, and the submissions of the appellant.

Despite the appellant's complaint that the learned judge did not evaluate the evidence, and overlooked the appellant's proprietorship of the disputed property, it is evident to us that the issue that concerned the High Court in the first instance was whether it had jurisdiction to determine the dispute. The fate of the appeal turned on whether it had been filed within time. The High Court could not have jurisdiction to entertain the appeal if it was filed out of time.

Section 8 (9) of the *Land Disputes Tribunals Act* provides that;

“Either party may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:

Provided that no appeal shall be admitted to hearing by the High Court unless a judge of that court has certified that an issue of law (other than customary law) is involved.”

As the indomitable Nyarangi, JA thundered in the oft cited case of *The Owners of Motor Vessel “Lillian S’ vs Caltex Oil Kenya Ltd [1989] KLR 1* this court stated thus:

“Jurisdiction is everything. Without it a court has no power to make one step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and a court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”

In this case, the decision of the Provincial Appeals Committee was rendered on 26th October 2006, and the appeal to the High Court was filed on 26th July 2007. The appellant ought to have filed the appeal on or before the 25th December 2006, but instead filed it over five months after the stipulated 60 days period.

The appeal having admittedly been filed out of time, the High Court cannot be faulted for striking it out. It lacked jurisdiction to entertain an appeal that was a nullity.

Accordingly, we find no reason to interfere with the decision of the High Court. Consequently, we dismiss this appeal with costs to the respondent.

Dated and delivered at Kisumu this 17th day of December, 2015.

D. K. MARAGA

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JUDGE OF APPEAL

D.K. MUSINGA

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR