



IN THE COURT OF APPEAL

AT NYERI

(CORAM: VISRAM, KOOME & ODEK, JJ.A)

CIVIL APPEAL NO. 209 OF 2011

BETWEEN

GILBERT MARUA NJAGI APPELLANT

AND

JANE MUTHONI NJAGI RESPONDENT

(An appeal from the ruling of the High Court of Kenya at Nyeri (Sergon, J.)

Dated 15th July, 2011 in

H.C Misc. Civil Application No. 180 of 2010)

JUDGMENT OF THE COURT

1. Before us is an appeal from the ruling of the High Court (Sergon, J.) dated 15th July, 2011 wherein the court declined to grant the appellant leave to appeal out of time against the decision of the Provincial Land Disputes Appeals Committee (the Appeals Committee).
2. The genesis of this appeal is a dispute between the parties over a parcel of land described as L.R No. Mugunda/Nairutia/Block 1/385 (suit property). The suit property belonged to the parties' father one Njagi Marua. After the death of their father, the respondent discovered that the appellant had fraudulently transferred the suit property to himself. She filed a claim in the Mweiga Land Disputes Tribunal (tribunal) claim no. 8 of 2001 seeking a portion of the suit land. The tribunal in its award dated 27th June, 2001 ordered the suit property to be subdivided equally between the appellant and the respondent. The award by the tribunal was subsequently adopted as an order of the Chief Magistrate's Court at Nyeri on 19th October, 2001. Thereafter, the appellant filed an appeal against the tribunal's award in the Appeals tribunal. The Appeals Committee confirmed the tribunal's award on 8th May, 2002. The appellant was also granted 60 days by the Appeals Committee to file an appeal against its award in the High Court on points of law.
3. Thereafter, the appellant moved the Chief Magistrate's Court at Nyeri vide an application dated 26th March, 2005 to set aside the award of the tribunal. On 12th May, 2005, the Chief Magistrate's Court set aside the tribunal's award on the ground that it lacked jurisdiction to grant the order it issued. Consequently, the respondent filed an appeal in the High Court challenging the decision of the learned magistrate. The High Court (Kasango, J.) in a judgment dated 8th July, 2008 set aside

- the learned magistrate's decision dated 12th May, 2005 and reinstated the lower court's order adopting the tribunal's award.
4. Subsequently, the appellant filed a Notice of Motion application dated 24th September, 2010 in the High Court seeking leave to appeal out of time against the decision of the Appeals Tribunal. The grounds upon which the appellant relied on in support of his application were that firstly, despite instructing his then advocate on record, M/S Wahome Gikonyo Advocates, to appeal against the decision of the Appeals Committee they failed to do so in good time; secondly, that his then advocates misled him into filing an application for review of the tribunal's award as opposed to filing an appeal in the High Court; thirdly, that the delay in filing the intended appeal was occasioned by the negligence of his then advocate; and that fourthly, the intended appeal has high chances of success.
 5. The application proceeded for hearing before the learned Judge (Sergon, J.) *ex parte* because the appellant failed to appear and file a replying affidavit in opposition to the same. The learned Judge in a ruling dated 15th July, 2011 dismissed the appellant's application. He held *inter alia* that the court had no jurisdiction to extend the time within which an appeal from the Appeals Committee could be filed the same not having been provided under the **Land Disputes Tribunal Act No. 18 of 1990**; and that the **Civil Procedure Act**, Chapter 21, Laws of Kenya was not applicable in the instant case.
 6. It is against the said decision of the High Court that the appellant has filed this appeal based on the following consolidated grounds:-
 - i. ***The learned Judge erred in law and fact for not taking into consideration that the appellant had engaged a lawyer who failed to file the appeal in the High Court.***
 - ii. ***The learned Judge erred in law and fact by not taking into consideration that the application which was before him was only seeking protection of the appellant's interests to be allowed to file the appeal on a point of law.***
 - iii. ***The learned Judge erred in law and in fact by not taking into consideration that the application proceeded *ex parte* since the respondent did not appear and therefore the learned Judge should not have ruled in favour of the respondent.***
 7. Both the appellant and respondent appeared in person during the hearing of this appeal. The appellant urged that he was appealing against the decision of the High Court which erred in declining to grant him leave to file the intended appeal out of time. He argued that the suit property belonged to him and urged us to allow the appeal. The respondent on the other hand opposed the appeal and submitted that the appellant still has possession of her portion of land and has threatened her with death.
 8. We have considered the record, grounds of appeal, submissions by parties and the law. In considering an application for extension of time within which to file an appeal a court exercises its discretionary power. Therefore, before we can interfere with the learned Judge's discretion we must be satisfied that she misdirected herself in some matter and as a result arrived at a wrong decision or, that she misapprehended the law or failed to take into account some relevant matter. In ***Mbogo & Another- vs- Shah (1968) E.A. 93*** at page 95, Sir Charles Newbold P. held,

'.....a Court of Appeal should not interfere with the exercise of the discretion of a single judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice....'
 9. The **Land Disputes Tribunal Act** provides for the procedure to be followed in appealing against a Tribunal's award. **Section 8(9)** of the **Land Disputes Tribunal Act** provides as follows:-

'Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within 60 days from the date of the decision

complained of..’

From the foregoing we agree with the learned Judge’s finding that the **Land Disputes Tribunal Act** has no provision granting the High Court power to extend the time within which an appeal from the decision of Appeals Committee can be filed. The **Land Disputes Tribunal Act** is a special legislation that was enacted expressly to govern the jurisdiction and the procedure of Land Disputes Tribunals and as such the Act must be construed and applied strictly; in that what is in it is what the legislature intended to be therein in the manner and extent it is there. Therefore, the **Civil Procedure Act** is not applicable in this case. See this Court’s decision in ***H. Adongo & others –vs-Savings & Loans Society (Kenya) Ltd- Civil Appeal No. 22 of 1987.***

10. Having expressed ourselves as above we find that the appeal herein has no merit. Accordingly, the appeal herein is dismissed with costs to the respondent.

Dated and delivered at Nyeri this 25th day of September 2013.

ALNASHIR VISRAM

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JUDGE OF APPEAL

MARTHA KOOME

.....

JUDGE OF APPEAL

J. OTIENO-ODEK

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR