



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI

(CORAM: OMOLO, J.A (IN CHAMBERS))

Civil Application Nai 259 of 2002 (NYR. 27/2002)

BETWEEN

JOSEPH MURIITHI NJIRUAPPLICANT

AND

TERESIAH WANJA RAYMOND RESPONDENT

(An application for extension of time to file a Notice of Appeal and record of Appeal out of time in an intended appeal from the judgment of the High Court of Kenya at Embu (Omwitsa, Comm. of Assize) dated 15th February 2001

in

H.C.C. Appeal No. 24 of 1999)

RULING

The applicant Joseph Muriithi Njiru seeks from me under Rule 4 of the Court's Rules,

“..... leave to file a Notice of Appeal and Record of Appeal out of time from the Ruling of the Commissioner of Assize Hon. C.A. OMWITSA dated 15th February, 2001.”

I first heard the motion on **26th October, 2004** when I ordered it adjourned so that the applicant could obtain proceedings and certain other documents which were clearly necessary for the just determination of the motion. Consequent upon my order of **26th October, 2004**, Mr. Kariithi, learned counsel for the applicant, has now filed a further affidavit to which he has annexed a certificate of delay, the proceedings and their letter to the Deputy Registrar at Embu requesting for the proceedings. The decision against which the applicant seeks to appeal, as is clear from the part of the motion I have quoted, was made on **15th February, 2001**. The applicant's letter to the Deputy Registrar requesting for proceedings was dated **27th February, 2001**. That letter was written within thirty days of the date of the decision against which it is proposed to appeal and the letter shows on its face that it was copied to Mr. P.M. Muchira, learned counsel for the respondent Teresiah Wanja Raymond. The applicant accordingly complied with the requirements contained in the proviso to rule 81. Again the certificate of delay issued by the Deputy Registrar at Embu shows that the applicant's advocates were not supplied with the proceedings of the superior court until **6th April, 2005**. In fact the reason for my adjourning the motion on **26th October, 2004** was that as at that date the applicant had not obtained the proceedings and it would have been a futile exercise to extend time for him when he did not know the time the appeal would have been filed. In

the circumstances of this application, I am satisfied the delay between **15th February, 2001** when the ruling sought to be challenged on appeal was delivered and **30th August 2002** when the present motion was filed, has been satisfactorily explained. The applicant was still looking for the proceedings and there is no allegation or any evidence to show that the proceedings were ready and available but the applicant refused to collect them.

The other ground raised by Mr. Muchira in opposing the motion was one of law. The decision against which the applicant wants to appeal was one made in accordance with the provisions of the Land Disputes Tribunal Act, i.e. **Act No. 18 of 1990**. The applicant and the respondent are involved in a dispute over some land. Their dispute was arbitrated by Gichugu Land Disputes Tribunal in accordance with **section 3** of the Act. One of them then appealed to the Provincial Appeals Committee at Nyeri. Such appeals are allowed under **section 8(1)** of the Act. The Appeals Committee decided against the applicant. The applicant then appealed to the High Court under section 8 (9) of the Act. The High Court summarily rejected the appeal under section 79 B of the Civil Procedure Act. It appears that the applicant then applied to the High Court to review its decision summarily rejecting the appeal. Commissioner of Assize Omwitsa rejected the application for review and that is the decision the applicant wishes to appeal against.

Mr. Muchira says the Land Disputes Tribunal Act does not provide for appeals to this Court and that even if I extend time as requested, it would be an exercise in futility, as the proposed appeal has no chance of succeeding. I am not prepared to rule, as a single Judge, that the applicant has no right of appeal under the Act in issue. True, the Act does not specifically provide for a right of appeal from the decision of the High Court to the Court of Appeal but I also notice that section 8 (9) does not specifically bar such appeals. Compare this to section 8(8) which specifically provides that: -

“The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.”

Then **section 8(9)** provides for appeals to the High Court on matters of law and as I have pointed out that section does not specifically provide that the decision of the High Court on any question of law shall be final. Could decisions of the High Court on points of law be appealable to the Court under the provisions of section 75 of the Civil Procedure Act and Order 42 of the Civil Procedure Rules? Again, can a party whose appeal has been summarily rejected under **section 79 B** of the Civil Procedure Act apply to the High Court for a review of that decision under the review provisions of Order 45? As I have said I am not prepared to decide these issues as a single Judge and I am not prepared to refuse the applicant the extension he seeks on the basis that he has no right of appeal. Accordingly, I allow the notice of motion dated and lodged in Court on **30th August 2002** and I make the following orders:-

1. The applicant shall file and serve his notice of appeal within seven (7) days of this ruling;
2. The applicant shall file and serve his record of appeal within twenty-one days from the date the notice of appeal is lodged in Court;
3. The applicant shall pay to the respondent the costs of this motion, which costs I assess at Kshs.5,000/-, such costs to be paid within thirty days of the date hereof and in the event of failure to pay within the stated time the respondent shall be at liberty to execute for the said costs.

Those shall be my orders in the matter.

Dated and delivered at Nyeri this 13th day of May, 2005.

R.S.C. OMOLO

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR.