



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC APPEAL NO. 4 OF 2015

SHILINGI TAURA NZALA.....APPELLANT

=VERSUS=

CHARO TAURA NZALA.....RESPONDENT

RULING

1. The Application before me is dated 2nd May 2015 seeking for the enlargement of time within which the appellant may file and lodge his appeal.
2. The Application is also seeking for a stay of execution of the Judgment delivered on 10th March 2009.
3. The Application is premised on the grounds that the appeal was filed two years after Judgment was delivered; that at the time the Judgment was delivered, the Appellant was not informed the period within which he was to file an appeal and that the Appellant is naive and illiterate.
4. The Respondent has on the other hand also filed an Application dated 1st April 2015 praying that the appeal dated 23rd May 2011 be dismissed with costs.
5. Although the Respondent's Application is supported by the Affidavit of the Respondent, the same is not premised on any grounds.
6. The Appellant filed a Replying Affidavit opposing the Respondent's Application on 2nd June 2015. In the said response, the Appellant reiterated the depositions in his Affidavit in support of his Application.
7. I have gone through the entire file and I have not seen a Replying Affidavit by the Respondent in response to the Appellant's Application for enlargement of time.
8. The Malindi Land Disputes Tribunal delivered its decision in Land Dispute number 3 of 2009 on 10th March 2009. However, it was not until 24th May 2011 that the Respondent lodged his appeal with the then Provincial Appeals Committee pursuant to the repealed Land Disputes Tribunal Act. The said Appeal was supposed to be filed within 30 days.
9. When the Land Disputes Tribunal Act was repealed by the Environment and Land Court Act, 2011, all matters that were pending before the Provincial Appeals Committee were transferred to this court.

10. The Appellant is seeking for the enlargement of time within which the appeal should have been filed while the Respondent wants the appeal to be struck out for having been filed out of time.

11. Section 79G of the Civil Procedure Act provides that an appeal from the subordinate court to the High court may be admitted out of time if the Appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

12. The Appellant has deponed that he was acting in person and is naive and illiterate.

13. It was his deposition that he was not informed that he should file an appeal within 30 days.

14. Although ignorance of the law cannot be accepted as a valid defence to a claim, this court takes cognizance of ignorance of procedural laws by illiterate men and women residing in the villages.

15. Considering that the matter in question pertains to land, an emotional and explosive issue in this country, the interests of justice demands that the Appellant should be allowed to prosecute his appeal albeit having filed it out of time in the absence of evidence of the prejudice that shall be occasioned to the Respondent.

16. Indeed, the Respondent did not file a Replying Affidavit in opposition to the said Application.

17. It is trite law that where a pleading has been filed out of time, the court can deem it to have been filed within time. Consequently, I shall deem the Memorandum of Appeal dated 23rd May 2011 to have been filed within time.

18. For those reasons, I allow the Application dated 27th May 2015 with no orders as to costs and disallow the Application dated 1st April 2015 with no orders as to costs.

Dated and delivered in Malindi this **13th** day of **November** 2015.

O. A. Angote

Judge