



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MALINDI
ENVIRONMENT AND LAND COURT
MISC. APPLICATION 16 OF 2013

JULIUS MASHA KALAMA.....APPLICANT

=VERSUS=

JOSEPH CHARO KITI.....RESPONDENT

RULING

1. These proceedings were commenced by way of a Miscellaneous Application. Indeed, it is the said Miscellaneous Application dated 14th November 2013 filed pursuant to the provisions of Order XLI Rule 4 that is before me. The Application is seeking for the following orders:-

- (i) That** this Honourable Court do order a stay of execution of the Judgment and order made by this Honourable Court on the 10th day of April 2010 and the notice to show cause dated 9th February, 2010 pending the hearing and final determination of the Applicant's application.
- (ii) That** the applicant be granted unconditional leave to appeal out of time.
- (iii) That** this application be served on the Respondent.

- 2. The Application is premises on the grounds that the Applicant has an arguable case with a high probability of success if leave to appeal out of time is granted; that unless the Application is allowed, the Respondent shall proceed with execution and that the Applicant is willing to deposit security as the court may order.
- 3. The Application is supported by the Applicant's Affidavit in which he has deponed that he lodged a land dispute number 19 of 1998 although he was not given a chance to prosecute it; that the Tribunal, without his knowledge gave orders in favour of the Respondent together with costs amounting to Kshs.652,000 /= and that the Magistrate's court subsequently adopted the Tribunal award as an order of the court.
- 4. It is the Applicant's deposition that it execution proceeds, then the intended Appeal will be rendered nugatory and the Applicant will suffer irreparable loss.
- 5. The Respondent filed his grounds of opposition on 11th December 2013 and averred that the Notice of Motion is a non-starter and improperly before the court.
- 6. According to the Respondent, the Applicant is complaining about an order that was issued way back in February and April 2010 and that the inordinate delay is inexplicable.
- 7. The parties filed their respective submissions which I have considered.
- 8. The Application before is seeking for two prayers, firstly, for leave to file an appeal out of time

- and secondly for stay of execution pending the hearing and determination of the appeal. The order for stay of execution can only be granted once the Applicant is granted leave to file the Appeal out of time.
9. The Applicant has neither attached the decision he intends to appeal against nor the draft Memorandum of Appeal. It is not even clear from his Supporting Affidavit when who the said decision was delivered and by which Tribunal.
 10. The only annexure attached to the Application is the “warrant to the court bailiff to give vacant possession” in PMCC No. 36 of 2006. The said warrant is dated 10th April, 2010. It therefore follows that the decision that the Applicant is seeking to appeal against was delivered way before 10th April 2010.
 11. The Applicant has not explained in his affidavit the reasons why he has did not file his appeal against the decision of the Tribunal or Magistrate within the requisite 30 days.
 12. In the absence of an explanation for the inordinate delay in filing the appeal, I find that the Applicant's Application dated 14th November 2013 is unmeritorious and I dismiss it with costs.

Dated and delivered in Malindi this 11th day of April, 2014.

O. A. Angote

Judge