



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 33 of 2008**

**BILLOW ABDI ADEN.....1ST APPLICANT
MADULID IBRAHIM SHEIKH.....2ND APPLICANT
HIRAD ABDILLE MOHAMED.....3RD APPLICANT
SALAT HUSSEIN NUH.....4TH APPLICANT
MUKTAR IBRAHIM SHEIKH.....5TH APPLICANT
MOHAMMED NONO IBRAHIM.....6TH APPLICANT**

**VERSUS
HABIB SHEIKH MOHAMED.....RESPONDENT**

RULING

1. By an amended notice of motion dated 24th June, 2008, the applicants seek to have time extended so that the appeal which they filed in this court on 25th January, 2008, is deemed properly filed. The applicants also seek orders of injunction and or stay, restraining the respondents from interfering with, demolishing or destroying any structures constructed on the suit land or evicting the applicants until the appeal is heard and determined.
2. The applicants further seek an order staying execution of all orders issued by the Senior Resident Magistrate in Wajir on the 6th day of December, 2007 and 17th January, 2008 in Civil Case No.5 of 2007 until the appeal is heard and determined.
3. The application is based on the grounds that the suit property belongs to the applicants; and that the suit property is worth more than Kshs.2.8 million which is beyond the jurisdiction of the trial magistrate in the lower court; and further that the suit property involves various buildings and other structures which if demolished will render the appeal nugatory. The application is also supported by an affidavit sworn by Hiram Abdille on 4th February, 2008, a supplementary affidavit sworn by Hiram Abdille and filed on 15th April, 2008 and another supplementary affidavit also sworn by Abdille on 25th June, 2008.
4. Hiram Abdille depones that the suit property which he identifies as plot No.R5265 Wajir Township was allotted to him by the Council pursuant to a letter dated 30th March, 2007, issued to him by the Council. Hiram Abdille has put up premises on the suit premises worth Kshs.2.8 million, and has been staying on the suit premises with his family. The applicants explain that pursuant to a suit filed against them by Habib Sheikh Mohamed, the 1st respondent, and the inter parte hearing, a judgment was delivered against the respondent.
5. The deponent explains that it was their desire to lodge an appeal and therefore they applied for certified copies of proceedings and judgment. The applicants explain that the delay in filing the proceedings within the appropriate time, was caused firstly by the delay in obtaining copies of the proceedings and judgment. Secondly, by the general election and post election violence which erupted in the country, and which interfered with transport communication between Wajir and Nairobi. Although duly served with the application and the affidavit, the respondent did not file any response to this application. The respondent did not even appear for the hearing of the application despite having been served with the hearing notice. Counsel for the applicant Mr. Oluga, has urged the court to allow the application and issue orders as prayed.

6. I have carefully considered the application and I am satisfied that the applicants have shown sufficient reason to justify the court extending time under Section 79G of the Civil Procedure Act, as read with Order XLIX Rule 5 of the Civil Procedure Rules, for the applicant's appeal to be filed out of time, and the appeal filed on 25th January, 2008, deemed as properly filed.

7. I have also considered the application for injunction and orders further staying execution of the orders issued by the SRM in Civil Case No.5 of 2007. I am satisfied that the appeal herein involves a suit property in which the 3rd applicant is residing with his family. The execution of the orders issued by the trial magistrate will interfere with the applicant's occupation of the suit premises. The applicants also stand to suffer substantial loss as the suit property may change hands and this will render the applicants' appeal nugatory. I find that the applicants have satisfied the requirements of Order XLI Rule 4(2) of the Civil Procedure Rules.

8. For the above reasons, I allow the application, and issue orders as prayed in the amended notice of motion dated 24th June, 2008.

Dated and delivered this 24th day of March, 2010

H. M. OKWENGU

JUDGE

In the presence of: -

Oluga for the applicants

Advocate for the respondent absent

Eric - Court clerk