



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC MISCELLANEOUS APPLICATION CASE NO. E002 OF 2020

MUGAMBI CHABARI M'MUKIIRA.....APPLICANT

VERSUS

REBECCA GAKUNDI KIGANU.....RESPONDENT

RULING

1. This application states that it has been brought to court under Order 50 Rule 1, and Order 42 rule 6(1) of the Civil Procedure Rules, sections 1A, 1B and 3A of the Civil Procedure Act, sections 79G and 95 of the Civil Procedure Act and other enabling sections of the law.
2. The application is supported by the affidavit of **MUGAMBI CHABARI M'MUKIIRA**, the respondent, sworn on **16th November, 2020** and has the following grounds:
 - a) That the honourable court delivered judgment in the matter herein on 30th day of January, 2020 in favour of the respondent herein thus contrary to the law and facts availing before the honourable court.
 - b) That being aggrieved with the decision of the court, the applicant sought the services of Mutuma Gichuru & Company Advocates on 7th February, 2020 to file an appeal to this court against the decision made on 30th day of January, 2020 for and his behalf.
 - c) That the said firm of Mutuma Gichuru & Company Advocates did not file the appeal within the stipulated time and after persistent visits to the firm by the applicant they issued him with a notice of appeal dated 29th February, 2020 which was the final day for the appeal.
 - d) That the time allowed to file an appeal has since run out.
 - e) That the delay in lodging the appeal as outlined herein-above was inadvertent on my applicant and the delay herein is not so inordinate or so great as to be excusable.
 - f) That the respondent herein is extracting a decree anytime now there being no stay thus execution is foreseeable soon, with no stay orders hence just apprehension of harm by the applicant/intended appellant.
 - g) That the intended appeal raises serious questions of both law and fact which the honourable lower court fell into error.
 - h) That the subject matter of dispute is land hence stands the risks of being sold in execution to the detriment of the applicant herein.
 - i) That if the orders sought herein are not granted and the decree executed irreparable harm shall have occasioned.
 - j) That such extreme and highly prejudicial consequences before the lodgement, hearing and determination by the intended appeal would subvert the ends of justice and render appeal nugatory.
 - k) That the applicant undertakes to lodge the intended appeal and record whereof expeditiously within such time as this honourable court may order upon requisite leave being granted.
 - l) That the delay of filing (sic).
 - m) That the applicant has moved diligently and expeditiously in bringing this application.

n) That the applicant is willing to abide by any conditions set by this honourable court for the grant of the orders sought herein.

o) That it is therefore in the interest of justice and fairness that the prayers sought in the application filed herewith be granted.

3. When the application was slated for interpartes hearing on **9th February, 2021**, the applicant did not come to court. The respondent was in court. She told the court that the applicant was disturbing her because she was a poor widow. As the applicant was not in court, she asked the court to dismiss the application.

4. A party cannot file a matter in court and fail to pursue it. A matter concerning expansion of time and stay of execution is a serious one. It cannot be fairly adjudicated if one of the parties elects not to come to court. The respondent alleges that the applicant is bothering her because she is a poor widow who has no son as all her 4 children are girls. She further alleges that the applicant has told her that women cannot be allowed to own land in Tharaka. These allegations are not particularly germane to this application and, in any case, by absenting himself, the applicant has denied himself a chance to give his side of the story.

5. The following orders are issued:-

a) The application is hereby dismissed.

b) Costs are awarded to the respondent.

Delivered in open Court at Chuka this 9th day of February, 2021 in the presence of:

CA: Ndegwa

Rebecca Gakundi Kigano – Respondent

HON. JUSTICE (Dr.) P. M. NJOROGE,

ELC JUDGE.