



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELCA CASE NO. 11 OF 2019**

**JAPHETH CHITERI.....APPELLANT**

**VERSUS**

**BROOKWAY NYONGE.....RESPONDENT**

**RULING**

The first application is dated 12<sup>th</sup> November 2020 and seeks the following orders;

1. That the appellant appeal be dismissed for want of prosecution.
2. That the respondent be allowed to reinforce Butere SRMC order issued on 23<sup>rd</sup> November, 2018 vide No. 184 of 2001.
3. That costs of this application be provided.

It is based on the grounds that the appellant/respondent has taken no steps after the institution of this appeal since 8<sup>th</sup> April, 2019. That due pendency of this appeal has caused the applicant to suffer mental anguish and incur exorbitant costs. That the claim herein involves land which ought to be disposed off expeditiously as per the Constitution of Kenya. That it is trite law that litigation ought to be decided on merit and not on technicalities as enlisted by the respondent. That this application has been made timeously which warrants the orders sought. That the respondent has issued threats to the applicant whereof he booked the same vide OB No. 12/24/8/2020 at Butere Police Station. That appellant has not served memorandum of appeal and compiled record of appeal. That it is the interest of justice to grant the orders sought as no prejudice shall be caused to the respondent.

The appellant/respondent submitted that by the time he was filing this appeal, the ruling that he was appealing against had not been typed. That by mistake his advocate on record compiled the record of appeal without enclosing the ruling, that he has equally filed a supplementary record of appeal enclosing the ruling and served the same upon the respondent. That his appeal should not be dismissed because of mistake of his counsel.

The second application is dated 7<sup>th</sup> December 2020 and is brought under Section 1, 1A, 1B, 2, 2A, 3, 3A, 63 (e) of the Civil Procedure Act, order 42 & 52 of the Civil Procedure Rules as read together with Article 159 of the Constitution of Kenya 2010 seeking the following orders;

1. That directions in this matter be taken.
2. That the appeal be heard in the ELC Court in Kakamega before one judge.
3. That the same be disposed off by way of written submissions.
4. That the supplementary record of appeal be deemed duly file and served upon the respondent herein.
5. That the matter be disposed off on its merit.

It is based on the annexed affidavit of Japheth Chiteri the grounds that this matter has matured for hearing. That the record of appeal and the supplementary record of appeal have been filed and served upon the respondent herein. That both parties are anxious to have this matter heard and determined on merit. That this court should allow this application.

This court has considered the applications and the submissions therein. From the record I find that the appeal was filed on the 8<sup>th</sup> of April, 2019 together with an application for stay of execution of judgment. That the court granted an order of status quo pending appeal. I find that the appellant should be given a chance to prosecute his appeal. The application dated 12<sup>th</sup> November, 2020 is dismissed with no orders as to

costs. The application dated 7<sup>th</sup> December 2020 is granted with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 23<sup>RD</sup> MARCH 2021.**

**N.A. MATHEKA**

**JUDGE**