



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC MISCELLANIOUS APPLICATION NO. 13 OF 2019

JOSEPH MUIGAI WANENE.....APPLICANT

-VERSUS-

LANKISA OLE MERIT.....RESPONDENT

RULING

This ruling is on the Notice of Motion dated 18th February, 2019.

The motion which seeks to have the Applicant's appeal admitted out of time as well as a stay of execution is brought under **Articles 40 and 50 of the Constitution of Kenya, Section 1A, 3 and 3A of the Civil Procedure Act and Orders 22, 42 Rule 6 and 51 of the Civil Procedure Rules** and all enabling provisions of law.

The grounds for seeking the order are that the applicant is the registered proprietor of L.R. KAJIADO/KAPUTIEI-NORTH/4098 and KAJIADO/KAPUTIEI-NORTH/4099 and that he was never heard by the District Land Disputes Tribunal through no fault of his own. He craves to be heard on appeal.

The application is supported by an affidavit sworn by the Applicant in which he reiterates what is in the grounds and attaches four documents namely;

- i. Copies of title deeds to the suit properties.
- ii. Copy of award before the Kajiado Tribunal case no. 0012/2001 dated 11/10/2001.
- iii. Copy of the decree in Tribunal Case No. 17 of 2002 at Kajiado Principal Magistrates Court dated 2nd September, 2012.
- iv. Memorandum of Appeal in draft form

The application is opposed by the Respondent who has sworn a replying affidavit in which he deposes, inter alia, that the Applicant's registration as owner was cancelled by the Court owing to fraud and there is unexplained delay on the part of the applicant.

Counsel for the parties filed written submissions on 17th March, 2021 and 7th October, 2021 respectively.

I have carefully considered the application in its entirety including the grounds, the affidavits, the annexures and the case law cited in the submissions.

I find the proviso to Section 79 G of the Civil Procedure Act gives this Court discretion to admit an appeal out of time if the Appellant satisfies the Court that he had sufficient cause for not filing the appeal in time.

The only issue for decision is whether the Applicant has satisfied the Court that he had a good reason for failing to file the suit in time.

I find that the application dated 18/2/2019 has merit for two reasons;

Firstly, there is no evidence to prove that the applicant was ever served to appear before the tribunal. If he was never served, then it means that he was not aware of those proceedings. It was in those proceedings that the titles to his land parcels were revoked.

Though the applicant has not stated the date on which he became aware of the decision that he seeks to appeal against, proof was needed that he deliberately refused to appear before the tribunal and this proof is lacking.

Secondly, the right to a fair hearing enshrined in Article 50(1) of the Constitution requires that a party who craves to be heard should not be denied that right.

For the above reasons, I allow the application dated 18/2/2019.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 1ST DAY OF DECEMBER, 2021

M.N. GICHERU

JUDGE