



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 35 OF 2018

GATUGI MUGIRA.....APPELLANT

VERSUS

LAWRENCE MIRITI BAKARI1ST RESPONDENT

ONESMUS GITOBU M'NKANATA.....2ND RESPONDENT

RULING

1. This ruling is in respect of the application dated 20.5.2019 where the applicant/appellant is seeking the following orders:

(i) This honourable court be pleased to extend time within which the appellant may file his final submissions in this appeal.

(ii) The draft appellant's submissions filed herewith be deemed properly filed and served.

(iii) The respondents be granted reasonable time within which to file their submissions.

(iv) Costs be provided for.

2. The application is premised on the grounds set out on the face of the application and in the affidavit of the advocate for the applicant.

3. The applicant contends that he did not comply with the courts orders of 20.3.2019 on the timelines of filing submissions because the clerk of the advocate had filed the file away instead of presenting it to the advocate to prepare the submissions.

4. The application is opposed vide the replying affidavit of Lawrence Miriti, the 1st respondent who avers that on several occasions the appellant has failed to file his submissions.

5. He also says that he is no longer the owner of the suit land so he should be removed from these proceedings.

6. I have considered all the issues raised herein as well as the submissions of the parties. I find on 20.3.2019, the court gave directions that the appeal was to be canvassed by way of written submissions of which the appellant was to file and serve his submissions by 20.4.2019. He didn't comply as the file was apparently filed away by the clerks of the advocate. The court had listed the matter for mention on 21.5.2020.

7. The present application was filed on 20.5.2020. It cannot therefore be true that the appellant on several occasions failed to file the submissions.

8. What I can term as unfortunate is that the prosecution of this present application has taken so long, almost one year. This appears to have been occasioned by the failure on part of 2nd respondent to file their submissions and they sought for more days to comply on 13.11.2019 but even as at 25.2.2020, they never filed any submissions.

9. All in all, I am inclined to allow the application of 20.5.2019 but with costs to 1st respondent.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE