

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

MISCELLANEOUS CIVIL APPLICATION NO. 32 OF 2018

MICHAEL PATRICK LUSIRO.....APPELLANT/APPLICANT

VERSUS

BONFACE SANDE LUSIRO

DOUGLAS ONYANGO OKUMU.....RESPONDENTS

RULING

1. The application is brought by way of Notice of Motion dated 11th April 2018 under sections 1A, 1B, 33A (sic) and 63(e) of the Civil Procedure Act and Order 22(1) (sic) Civil Procedure Rules and any other enabling provisions of the law. The applicant is seeking for orders in the following terms:

- a) That the application be heard ex-parte at the first instance. (Spent).
- b) That the warrants of arrest issued on 13th December 2017 be stayed pending the determination of the appeal.
- c) That the grant of letters of administration issued on 2nd July 2008 and confirmed on 3rd February 2009 be stayed until the intended appeal is heard and determined.
- d) That the applicant to be granted leave to appeal out of time.

2. The application was premised on grounds that he was not satisfied with the ruling and that he currently resides on land parcel number **SAMIA/WAKHUNGU/ODIADO/1761**.

3. The application was opposed on grounds that there is no evidence that the applicant has applied for the proceedings to facilitate the intended appeal.

4. The application was wrongly drafted and I was left to fill in the gaps. It cited nonexistent section 33 A of the civil Procedure Act and Order 22(1) Civil Procedure Rules. This notwithstanding, I will address myself to the correctly cited legal provisions.

5. The warrants in issue emanated from costs that were taxed. The applicant ought to have made an offer to deposit the costs in court pending the determination of the appeal. He has not made any offer at all. Secondly, he has not demonstrated that he has applied for the proceedings. The ruling that gave rise to the costs the subject of the warrant of arrest was delivered on 22nd June 2017. Am aware if indeed he applied for proceedings, the same would have been supplied within a month of application. Had he demonstrated that he applied for the proceedings and the fault is on the registry, probably this would have persuaded this court. This is not the position now. He has not therefore satisfied this court and prayers (b) and (c) cannot be granted. I however grant him leave to appeal out of time. Costs shall abide the outcome of the appeal.

DELIVERED and SIGNED at BUSIA this 8th day of May, 2018

KIARIE WAWERU KIARIE

JUDGE.