



**REPUBLIC OF KENYA**

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

**ELC APPEAL NO 22 OF 2014**

**FORMERLY CIVIL APPEAL NO. 69 OF 2010**

**JOHN IKHUTA MULALU .....APPELLANT/RESPONDENT**

**VERSUS**

**KASSIM AMUKOWA MULALU .....RESPONDENT/APPLICANT**

**RULING**

The Application is dated 26<sup>th</sup> February 2015 and seeks the following orders;

- (a) That the appeal filed on 30<sup>th</sup> September, 2010 be dismissed for want of prosecution.
- (b) That the costs of this application be provided for.

The application is supported by the grounds therein and the annexed affidavit of KASSIM AMUKOWA MULALU. The applicant submitted that the appellant/respondent filed his appeal way back in 2010 and has not moved court or made efforts to fix his appeal for hearing. The appellant delay clearly shows that the appellant/respondent is not interested in having this appeal determined and or settled. That it will be in the interest of justice if this appeal is determined.

The Appellant/ respondent submitted that this case concerns a parcel of land that his father purchased from PAUSTINA AUMA when they were still children which parcel was left to them as their inheritance by their late father.

That one John Kulitu is the son of the individual who sold the parcel to their father and the land was sold when he was a small boy. Before their father died he gave them each a piece of the said land and each of them build their homes and settled with their families. Sometime in June, 2012 the applicant/ respondent went to the lands office at Kakamega and colluded with the land offices there to remark the old boundary that existed between his parcel of John Kulitu's parcel. The lands officers with the help of the area Assistant Chief forcefully moved the boundary into his parcel and even in the place he built his home. The said John Kulitu is now tilling his land forcefully and is converting it into his own. Together with the applicant/respondent they are now forcing him to move away from his land. The area Assistant Chief even attempted to have him arrested but the DO intervened and stopped him. He has lived on this parcel all his life and if there is an issue it can be settled in court. The respondent/applicant is seeking that the appeal be dismissed instead of taking it all the way to hearing. The appeal has always been active, a fact that is well in the respondent's/ applicant's knowledge and for that matter the respondent must never be allowed to rely on falsehoods to gain an advantage over the appellant.

The court has considered both the applicant/respondent's and the respondents/appellant's submissions. From the pleadings and proceedings in the file it would appear this matter has been active. Indeed this matter concerns land and it is in the interest of justice that the parties be given a change at the full trial. The current application was filed way back in 2015 and has never been heard. I find coming for hearing at this stage it has no merit and dismiss it with costs. The Appellant is to fix a hearing date of the appeal in the registry within the next 30days.

Cost of this application to be in the cause.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9<sup>TH</sup> DAY OF  
MAY 2017.**

**N.A. MATHEKA**

**JUDGE**