

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 99 OF 2019

JOSEPH KABERIA KUMARIAPPELLANT/APPLICANT

VERSUS

TONY MWENDA MUTHAURARESPONDENT

RULING

1. Vide an application dated 30.10.2019, the appellant/applicant is seeking orders for reinstatement of his application dated 7.8.2019 which was dismissed on 28.10.2019. The application is premised on the grounds on the face of it and on the affidavit of Winnie Matiri, advocate for the applicant. It is averred that on 28.10.2019, the advocate for the applicant had many matters including succession cause No. 559 of 2011 in High court.

2. On 27.1.2020, the court gave directions for the application dated 30.10.2019 to be canvassed by way of written submissions. The applicant duly filed his submissions.

3. I note that the application dated 7.8.2019 was filed under a certificate of urgency, such that the file even had to be transmitted to Embu ELC for hearing in the first instance. The applicant obtained some of the orders (in particular the order of inhibition) and a date of 23.9.2019 was given. The applicant was also directed to serve the application. Come 23.9.2019, and service had not been effected hence the court gave the applicant the date of 28.10.2019. Come 28.10.2019 and there was no appearance for the applicant hence the dismissal of the application. Applications of this nature are the ones which clog the court's systems.

4. Having filed an application under a certificate of urgency the applicant ought to have been diligent enough and prosecute the same as per court's directions. There is no good reason as to why the orders of my brother Judge Angima of 14.8.2019 (on service) and the orders of this court of 29.9.2019 (on hearing) were not complied with.

5. I also note that in the present application, the applicant is attempting to argue the issues raised in the dismissed application.

6. All I can say is that the application is not merited. The same is dismissed with costs.

7. The applicant is directed to file and serve the record of appeal within 30 days from the date of delivery of this ruling failure to which this appeal shall stand as dismissed.

8. Mention before the DR on 4.11.2020.

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

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given on 13.7.2020. 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