



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC APPEAL CASE NO. 14 OF 2017

FORMERLY MERU HIGH COURT CIVIL APPEAL 01/2011

JACOB NJERU KARUKU (suing as the legal representative)

KARIUKI GITABU HOSEA.....APPELLANT/APPLICANT

VERSUS

NJAGI NJUGUNA.....RESPONDENT

RULING

1. This application is dated 27th October, 2020 and seeks the following orders:

1.THAT this application be certified urgent and be heard ex-parte in the first instance.

2.THAT the firm of M/S MURANGO MWENDA & COMPANY ADVOCATES be allowed to take over the conduct of this matter from the firm of I. C. MUGO & COMPANY ADVOCATES and come on record for the appellant/applicant.

3.THAT the dismissal order issued on the 5/4/2017 be set aside.

4.THAT this appeal be reinstated for hearing on merit.

5.Costs of the application.

2. The application has the following grounds:-

a. That the appellant/applicant has instructed the firm of M/S MURANGO MWENDA & COMPANY ADVOCATES to take over the conduct of this matter from the firm of I. C. MUGO & COMPANY ADVOCATES.

b. That the Appeal herein was dismissed on 5/4/2017 for want of prosecution on the ground that the appellant/applicant did not attend court to show cause why the same shouldn't be dismissed.

c. That a Notice to Show Cause was issued and the appellant/applicant and his advocates on record were never served with a notice to show cause why the suit should not be dismissed for want of prosecution.

d. That the failure to attend court on the day fixed for notice to show was not attributable to the appellant/applicant but rather was due to failure to effect service of the said Notice to Show Cause on the appellant and his advocates on record and the appellant/applicant should not be denied an opportunity to canvass his Appeal on merit.

e. That the appellant/applicant has been and is desirous of proceeding with his Appeal expeditiously and unaware that the appeal had been dismissed, he has been making efforts to know the position of the matter in order to take appropriate steps to have it heard and determined on merit.

f. That the appellant/applicant has a strong and meritorious appeal with high chances of success and if the order of dismissal is not set aside and the appeal reinstated he will suffer irreparable damage and loss.

- g. That the subject matter of the suit is land which is an emotive factor and it is only right, proper, just and fair that the appellant/applicant is given an opportunity to be heard on merit.
- h. That the Respondent will not be prejudiced if the appeal is reinstated for hearing and determination on merit and it is in the interest of justice that the application be allowed.
- i. That this application has been made without undue delay and the appellant/applicant is ready and willing to abide by the terms and conditions the court may give.
- j. That it is in the interest of justice that the application be allowed and the prayers sought be granted.

DATED AT MERU THIS...27th...DAY OF...October,.....2020

FOR: MURANGO MWENDA & CO.

ADVOCATES FOR THE APPELLANT/APPLICANT

3. The application is supported by the affidavit of Jacob Njeru Karuku sworn on 27th October, 2020 which states:

SUPPORTING AFFIDAVIT

I, **JACOB NJERU KARUKU**, an adult male of P.O. Box 71-60102, Ishiara in the Republic of Kenya do hereby make oath and solemnly swear as follows:-

1. THAT I am the appellant/applicant herein hence competent to swear this affidavit.
2. THAT I instructed the firm of I. C. MUGO & CO. ADVOCATES to file this appeal against the decision of the Eastern Provincial Appeals Committee in the Provincial Appeals Committee No. 124 of 2009 dated 5/11/2010.
3. THAT the said firm filed the Memorandum of Appeal dated 3/1/2011 in the High Court of Kenya at Meru as MERU Civil Appeal No. 1 of 2011.
4. THAT I made a follow up of the appeal at Meru and I was informed that the appeal was transferred to Chuka after the Environment and Land Court at Chuka was constituted.
5. THAT I subsequently made a follow up of the matter at Chuka but my efforts turned fruitless and the registry staff informed me they had not received any such appeal from Meru and that I should follow up with my advocates on record.
6. THAT I made a follow up with my advocates on record who all along informed me that he had not taken any directions from the court on hearing of the appeal and was waiting for a notice from the court.
7. THAT I thereafter instructed the firm of M/S MURANGO MWENDA & CO. ADVOCATES to act for me in the matter and follow up on the position of the appeal.
8. THAT the firm of M/S MURANGO MWENDA & CO. ADVOCATES wrote to the High Court of Kenya at Meru court asking to be allowed to peruse the file and make copies of the pleading to enable them proceed with the matter appropriately. ***(Annexed and marked JNK I is a copy of the letter dated 15/6/2020 sent to Meru via email and the email forwarding the same)***
9. THAT the High Court of Kenya at Meru informed my advocates that the matter was transferred to Chuka on 3/7/2017 for hearing and determination.
10. THAT my advocates subsequently wrote to the High Court of Kenya at Chuka inquiring of the matter. ***(Annexed and marked JNK II is a copy of the letter dated 21/7/2020 sent to Chuka via email)***
11. THAT my advocates were informed that the Chuka ELC Appeals Register had no appeal with similar parties. ***(Annexed and marked JNK III is a copy of the email dated 22/7/2020 from Chuka Law Courts)***
12. THAT my advocates later discovered that the appeal was filed as a Civil Appeal and not an ELC Appeal and wrote to the court clarifying the issue and asking of the position thereof. ***(Annexed and marked JNK IV is a copy of the letter dated 27/7/2020 sent to Chuka)***
13. THAT on 13/10/2020 I was served with an application dated 5/10/2020 filed by the respondent herein in Chuka CM L.D.T Case No. 15 of 2009 seeking to evict me from the suit land. ***(Annexed and marked JNK V is a copy of the said application)***
14. THAT in the said application, the respondent attached and marked NN3, a copy of the ruling of this court showing that

the appeal herein was dismissed on 5/4/2017 for want of prosecution.

15. THAT it is upon being served with the said application that I learnt that upon transfer from Meru, MERU Civil Appeal No. 1 of 2011 was assigned number Chuka ELC (C.A) CASE NO 14 OF 2017.

16. THAT I perused the said ruling and learnt that a Notice to Show Cause had been issued asking parties to attend court and show cause why the suit should not be dismissed for want of prosecution; I did not attend court and the appeal was subsequently dismissed.

17. THAT neither I nor my advocates on record were served with the Notice to Show Cause why the appeal should not be dismissed.

18. THAT the failure to attend court on the day fixed for notice to show was not attributable to me but rather was due to failure to effect service of the said Notice to Show Cause on myself and my advocates on record and I should not be denied an opportunity to canvass my Appeal on merit.

19. THAT I have been and I am desirous of proceeding with this Appeal expeditiously and unaware that the appeal had been dismissed, I have been making efforts to know the position of the matter in order to take appropriate steps to have it heard and determined on merit.

20. THAT I have a strong and meritorious appeal with high chances of success and if the order of dismissal is not set aside and the appeal reinstated I will suffer irreparable damage and loss.

21. THAT the subject matter of the appeal is land which is an emotive factor and it is only right, proper, just and fair that I am given an opportunity to be heard on merit.

22. THAT I have not been indolent and did not deliberately fail to prosecute my appeal against the respondent and I pray that the dismissal order be set aside and an order for reinstatement of the Appeal be issued by the court.

23. THAT the Respondent will not be prejudiced if the appeal is reinstated for hearing and determination on merit and it is in the interest of justice that the application be allowed.

24. THAT it is in the interest of justice that the application be allowed and the prayers sought be granted.

25. THAT I swear this affidavit in support of my application for setting aside of the dismissal order dated 5/4/2017 and reinstatement of the appeal.

26. THAT what is deponed herein is true to the best of my personal knowledge information and belief.

SWORN BY JACOB NJERU KARUKU AT MERUTHIS.....27THDAY OF.....OCTOBER,...2020

4. At the ex parte stage, Advocate Murango told the court that at this stage, he sought prayers 1 and 2 to enable him to come on record instead of the firm of I. C. Mugo & Co. Advocates. Thereafter he would properly serve the application for inter partes hearing.

5. In the interest of justice, prayers 1 and 2 in the application are granted.

6. The applicant is directed to serve the application upon the respondent within 7 days of today.

7. The application will be heard **inter partes on 17.11.2020.**

Delivered in open Court at Chuka this 2nd day of November, 2020

P. M. NJOROGE,

JUDGE.