



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE CIVIL APPEAL NO. 3 OF 2018

ROMBO GROUP RANCH.....APPELLANT / APPLICANT

VERSUS

THE PRINCIPAL LAND REGISTRAR,

KAJIADO CENTRAL AND SOUTH.....1ST RESPONDENT

JACINTA KEUKE LEUDA.....2ND RESPONDENT

LEONARD NTAWASA LEUDA.....3RD RESPONDENT

(Being an Appeal from the Decision of the Principal Land Registrar, Kajiado Central and South Delivered on the 18th October, 2017)

RULING

What is before Court for determination is the Appellant's Notice of Motion application dated the 28th February, 2018 brought pursuant to Order 42 Rule 6 and Order 51 of the Civil Procedure Rules as well as Sections 1A, 3A, and 63 (e) of the Civil Procedure Act and all the other enabling provisions of the law. The Appellant seeks leave to file a Memorandum of Appeal out of time as well as stay the implementation of the Decisions of the Principal Land Registrar, Kajiado Central and South of 18th October, 2017.

The application is premised on the grounds that the Appellant is the registered proprietor of land parcel number Loitoktok/ Rombo 'B'/ 406. A dispute arose between the Appellant and the legal Administrator of the estate of Joel Leuda Peter Orumoi (Deceased) who are the current proprietors of Land Known as Loitoktok/ OI Karia/ 325 registered in the deceased name over the boundary of the two parcels of land and decision was made by the Principal Land Registrar, Kajiado Central and South on 18th October, 2017. The Appellant is discontent with the said decision and seeks for leave to file the Memorandum of Appeal out of time. Further, the delay in filing the Appeal was not intentional as the representatives of the Appellant had to convene a meeting and consult with over 3, 665 members before reaching the decision to appeal. The implementation of the Decision by the Land Registrar will occasion loss of land belonging to the Appellant and inherent harm would arise if the implementation is not stalled. Further, since the order of stay would not interfere with the status quo, the Respondents would not suffer any prejudice.

The application is supported by the affidavit of JOHN NKIPAPAI who is the Secretary to the Appellant where he reiterates his claim above and contends that the Appellant exhibits a case with good chances of success on appeal on points of law.

The application is opposed by the 2nd and 3rd Respondents who filed a replying affidavit sworn by LEONARD NTAWASA LEUDA the 2nd Respondent herein where he avers that the Appeal is bad in law and an abuse of the court process. He contends that an application seeking leave of court to enlarge time within which to Appeal Out of time must be brought by way of a Miscellaneous Application and not by way of Appeal as in this instance. The Appellant failed to Appeal within the 30 days and the intended Appeal is a mere afterthought as the Appellant realized that the 2nd and 3rd Respondents had moved the Court vide ELC No. 11 of 2018. He insists that the 1st Respondent, the Land Registrar, Kajiado conducted the site visit on the 16th October, 2017 diligently, honestly, professionally and without any bias, in the presence of all the parties who willfully participated in the said event. Further, that nothing wrong or illegal took place on the material date. He states that the Appellant opted not to bring its own private surveyor. Further, the Appellant took 5 months after the Land Registrar's decision and this Appeal is intended to defeat ELC No. 11 of 2018. He reiterates that the Appellant is advancing its own selfish interest through the suit with an intention of delaying and convoluting the matters before Court.

Both the Appellant as well as the 2nd and 3rd Respondents filed their respective submissions that I have considered.

Analysis and Determination

Upon consideration of the materials presented in respect of the Notice of Motion dated the 28th February, 2018, the following are the issues for determination

- Whether Leave Should be granted to the Appellant to file the Memorandum of Appeal out of time
- Whether there should be a stay of the implementation of the Decision of the Principal Land Registrar, Kajiado Central and South of 18th October, 2017

As to whether leave should be granted to the Appellant to file the Memorandum of Appeal out of time. I note the Appellant was granted a 30 days right to Appeal by the Land Registrar when he delivered his decision on the boundary dispute. The Appellant has sought to file an Appeal after 150 days. Except for the reason that the members were being consulted it has not offered any other explanation. I note the Appellant sought leave to Appeal out time after filing a Defence in the ELC No. 11 of 2018 which is a related suit. The Appellant has relied on various cases including the case of **Edward Njane Nganga & Anor V Damaris Wanjiku Kamau & Another (2016) eKLR** where the Judge had held that it is discretionary upon the court to grant an extension of time to appeal. The Respondent opposed the application and relied on **Civil Application No. 232 of 2017: In Aberdare Steel & Hardware Ltd Vs Shreeji Enterprises Ltd** citing with approval the decision in **Nicholas Kiptoo Arap Korir Salat V IEBC & 7 others SC Appl 16/2011** where Justice Musinga held that extension of time is an equitable remedy that is available to a deserving party and reason for delay must be explained. Further, the application has to be brought without undue delay. In relying on the two cases cited above, I find that the Appellant has not explained to my satisfaction the reason for delay in filing the Appeal against the District Land Registrar's decision. I note the Appellant is a group ranch which has officials that represent all the issues in respect of the ranch. I am hence unconvinced by the reason that the delay was because the Appellant had to consult all the members. Further, from the report, I opine that the Land Registrar acted within his mandate to hear and determine the boundary dispute. It is my considered view that the Appellant only filed this instant application after the suit ELC 11 of 2018 had been filed. It is against the foregoing that I decline to grant leave to the Appellant to file the Memorandum of Appeal out of time.

As to whether there should be a stay of the implementation of the Decision of the Principal Land Registrar, Kajiado Central and South of 18th October, 2017. From the Land Registrar's Report annexed to the instant application, it is evident that the Land Registrar proceeded to determine the boundary dispute as per the provisions of section 18, 19, and 20 of the Land Registration Act. The Land Registrar convened a forum where all parties were present. Further, he relied on various documents including the Registry Index Map (RIM) and Cadastral Map to determine the boundary dispute. Since there was no procedural impropriety in determining the said dispute and all parties were given a fair hearing as per the Fair Administrative Action Act, it is my considered view that the report is proper. In the circumstances, I will decline to stay the implementation of the Land Registrar's report.

It is against the foregoing that I find the application unmerited and will proceed to dismiss it with costs to the 2nd and 3rd Respondents.

Dated signed and delivered in open court at Kajiado this 2nd day of April, 2019

CHRISTINE OCHIENG

JUDGE