



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 29 OF 2017

JULIUS KIAMBATI M'MBURA.....APPELLANT

VERSUS

BERNARD KIRIMI TIRUNGA.....1ST RESPONDENT

THE LAND ADJUDICATION & SETTLEMENT OFFICER,

TIGANIA WEST DISTRICT.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. By a notice of motion filed in court on 21.9.2018, applicant is seeking orders to set aside or vacate the order made herein on 30.7.2018 dismissing the appellant/applicant's appeal herein and to reinstate the said appeal.
2. He also prays that the record of appeal filed herein on 15.5.2018 be admitted and be deemed to have been properly filed and the appellant/applicant be granted an extension of time within which to file written submissions.
3. The grounds in support of the application are that this matter came up for mention for directions on 30.5.2018 when the court directed that the record of Appeal be filed within 14 days and thereafter each party had 21 days to file submissions.
4. The Applicant avers that his counsel then on record, proceeded to file the record of appeal on 15.5.2018 but inadvertently failed to file written submissions as had been directed by the court. Thereafter, this matter came up for mention on 30.7.2018 and the court made an order for dismissal of the appellant/applicant's appeal for failure to file record of appeal and submissions within the timelines given by the court on 3.5.2018.
5. Applicant avers that since the record of appeal was filed on 15.5.2018, the same was filed within the 14 days period and should be admitted and deemed as having been properly filed.
6. Applicant further contends that the failure or delay in filing written submissions was an inadvertence or mistake on the part of the appellant/applicant's counsel, then on record.
7. The application is opposed vide the replying affidavit of Bernard Kirimi, (1st respondent) filed on 2.10.2018, where he contends that on 3.5.2018 appellant was directed to file the record of appeal within 7 days and not 14 days hence the record of appeal filed on 15.5.2018 was not in compliance with the court order.
8. I have considered the arguments raised herein, the record and the submissions of the parties.
9. As per the record of 3.5.2018, appellant was supposed to file the record of appeal within 14 days which days were to lapse on 17.5.2018. As such the record of appeal was properly filed on 15.5.2018.
10. As regards issue of submissions, applicant has explained that this was in advertence or mistake on the part of the counsel on record and as such mistakes should not be visited upon him.
11. I am in agreement with respondents submissions that a litigant has a role to play in ensuring that his case is prosecuted and the cited authority to that end are relevant.

12. In the instant case though, I have considered that the applicant took drastic steps of getting another advocate altogether to advance his claim after the dismissal of the suit.

13. It is only fair and just that he be given another opportunity to prosecute his case since the record of appeal was filed on time.

14. The application dated 19.9.2018 is allowed and each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 8TH DAY OF MAY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Miss Mwai holding brief for appellant/applicant

Miss Kungu for Attorney General

HON. LUCY. N. MBUGUA

ELC JUDGE