



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 8 OF 2002

JONES KOMBO M. LATIA.....APPELLANT

VERSUS

MUSEMBI MULWA.....1ST RESPONDENT

KITUU MULWA.....2ND RESPONDENT

RULING

1. In the Notice of Motion dated 30th October, 2018 and amended on 18th February, 2019, the Appellant is seeking for the following reliefs:
 - a. That the Applicant be allowed to act in person being Jones Kombo M. Latia in place of the firm of Mbulo & Co. Advocates.*
 - b. That this Honourable Court do review and set aside the court orders made on 22nd October, 2018 and allow the Applicant prosecute this Appeal which was dismissed.*
 - c. That the costs of this Application be provided for.*
2. In his Supporting Affidavit, the Appellant has deponed that he was dissatisfied with the lower court's Judgment that was delivered on 14th August, 2001; that he filed the current Appeal on 4th February, 2002; that his advocate was served with the Notice to Show Cause why the Appeal should not be dismissed for want of prosecution and that his advocate did not tell the court that it did not have jurisdiction to handle the Appeal.
3. The Appellant deponed that he is still interested in pursuing the Appeal and that his Appeal has high chances of success.
4. The Respondents did not oppose the Application.
5. The record shows that the Appellant filed his Memorandum of Appeal on 4th February, 2002 challenging the decision of the learned Magistrate in Kitui PMCC P&A No. 83 of 1998. The decision of the learned Magistrate was made on 14th August, 2001.
6. The record shows that after the Memorandum of Appeal was filed on 4th February, 2002, the matter was mentioned on 19th April, 2018, 11th October, 2018 and 22nd October, 2018. Indeed, on 22nd October, 2018, this court dismissed the Appeal because "no reason had been given why the Record of Appeal has never been filed."
7. The Appellant has not explained in the current Application why indeed he has never filed a Record of Appeal since he filed his Memorandum of Appeal on 4th February, 2002. In fact, the perusal of the record shows that the Memorandum of Appeal was filed six (6) months after the decision of the learned Magistrate.
8. The filing of the Memorandum of Appeal after the lapse of thirty (30) days after the decision of the learned Magistrate was contrary to the provisions of Section 79G of the Civil Procedure Act which provides as follows:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for

not filing the appeal in time.”

9. Considering that the Appellant has not given any good reason why he has never filed a Record of Appeal since the year 2002, I decline to reinstate the Appeal. Having declined to reinstate the Appeal, the issue of whether this court has jurisdiction to deal with the Appeal or not does not arise.

10. For those reasons, the Application dated 30th October, 2018 and Amended on 18th February, 2019 is dismissed with no order as to costs. The Appeal stands dismissed as ordered by this court on 22nd October, 2018.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 18TH DAY OF OCTOBER, 2019.

O.A. ANGOTE

JUDGE