

REPUBLIC OF KENYA

IN THE HGIH COURT OF KENYA AT MERU

ELC MISC APPLICATION NO. 36 OF 2019

WILFRED MUTHAMIAAPPELLANT/APPLICANT

VERSUS

LUKE MUGWIMI GITONGARESPONDENT

RULING

1. In the application dated 25.7.2019, applicant is seeking leave to appeal out of time, that the annexed memorandum of appeal be deemed as duly filed and that costs of this application be provided for.

2. The grounds in support of the application are that the ruling was read on 15th May, 2019, but the applicant did not have legal fees to lodge the appeal immediately. The respondent has threatened to evict the applicant from his land parcel and it is only fair and just that the application be allowed. Applicant also avers that the delay herein is not inordinate and same is excusable under the circumstances.

3. Applicant has also sworn a supporting affidavit dated 25.7.2019 where he has reiterated the grounds in support of his application. He added that he got the land from his father and he has been in peaceful occupation since 1967.

4. The application is opposed via the replying affidavit of one Luke Mugwimi Gitonga dated 12.9.2019 where he has deponed that he lower court rightly issued a temporary order of injunction against the applicant on 15.5.2019 as the applicant was out to illegally and irregularly evict him from the suit land which he has occupied since 2005 when he bought the land and that the applicant never sought to appeal against the said ruling nor did he apply for proceedings. The respondent also avers that the current application was a mere afterthought and that there was no justification as to why the applicant did not appeal within the stipulated time and that the main suit was pending for hearing and if the application was granted the main suit will be delayed. The defendant also in his affidavit prayed for costs.

5. I have weighed all the arguments raised herein. I have also thoroughly gone through the ruling of the magistrate delivered on 15.5.2019 where it has emerged that both parties were claiming occupation of the suit land. For the applicant herein he was saying he had been on the land since 1967 while respondent claimed he had been on the land since 2005. This means that the parties need to adduce evidence during the trial to support their claims and this ought to be done before the trial court. Allowing this application will only serve the purpose of delaying the determination of the dispute leading to more acrimony. It is not lost to this court that the matter is at the infancy stage before the trial court. The applicant ought to seek for the hearing of the case on priority basis.

6. Further, this application was filed **1 year 2 months** from the time the ruling was delivered. In the **SCOK Civil Application no. 7 of 2017**, the Supreme Court while dealing with an application to extend time to appeal ruled as follows;

“we regard the delay of 1 year 3 months as inordinate and the applicants are guilty of laches”

7. The delay in this case is certainly inordinate and inexcusable. I therefore find that the application is not merited and the same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 4TH DECEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Nyenyire holding brief for Kimathi K. for applicant

Ouma for respondent

HON. LUCY. N. MBUGUA

ELC JUDGE