



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

CIVIL MISC. APPLICATION NO. 28 OF 2016

ABDULATIF AHMED YUNUS.....APPLICANT

VERSUS

HUSSEIN MOHAMED ABDULKADIR.....RESPONDENT

RULING

1. The Application dated 28th July, 2016 is seeking for the following orders:

a. That this Honourable Court be pleased to grant leave to the Appellant to appeal out of time against the Ruling in Principal Magistrate Court at Lamu delivered by His Honourable J.W. Onchuru on the 29th day of September, 2015.

b. Costs be provided for in the cause.

2. The Application is based on the grounds that on 29th September, 2015, the lower court dismissed the Applicant's Application seeking to set aside an ex-parte Judgment; that the Ruling was delivered in the absence of the Applicant or his advocate and that the Applicant or his advocate were not informed of the date of the delivery of the said Ruling.

3. According to the Applicant, the effect of the Ruling has condemned the him unheard and that the Advocate was told the file was missing after the delivery of the impugned Ruling.

4. In response, the Respondent deponed that the Applicant was duty bound to make a follow up on his matter in the lower court; that the Application in the lower court was an afterthought after the Court of Appeal held that the Applicant had to set aside the judgment in the lower court and that the issues pertaining to the suit land have since been dealt with by this Court in ELC Case No. 26 of 2011 and the Court of Appeal.

5. The parties filed brief submissions which I have considered.

6. The Applicant is seeking for leave to file an appeal against the Ruling of the lower court out of time.

7. The impugned Ruling arose out of the Appellant's Application dated 22nd May, 2015 in Lamu PMCC No. 2 of 2001. The Ruling in the matter was delivered on 29th September, 2015 while the current Application was filed on 1st August, 2016.

8. Although the Applicant has deponed that he was not aware of the date of the Ruling, he has not informed the court the efforts he made to find out when the Ruling was going to be delivered.

9. The deposition that he was informed that the court file could not be found is not supported by any evidence by way in terms of a letter to the Executive Officer inquiring about the file.

10. The Applicant has therefore not given any good reason why it has taken him close to one year to seek leave to file an appeal out of time.

11. In any event, the issues raised in Lamu PMCC No. 2 of 2001 have been conclusively dealt with by this court and the Court of Appeal.

12. The Applicant only moved the lower court for setting aside the ex-parte orders in that court after that issue was raised by the Court of Appeal and this court.

13. Considering that this court and the Court of Appeal have rendered their decision on the issue of ownership of the suit property, the Applicant's efforts to resuscitate the same issues does not serve any useful purpose.

14. For those reasons, the Application dated 28th July, 2016 is dismissed with costs.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. OLOLA

JUDGE