



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L MISC. APPLICATION CASE NO. 24 OF 2014

(FORMERLY ELDORET HCC MISC. CIVIL APPLICATION NO. 168 OF 2014)

MURKOMEN YANO

KIPROTICH KIPKORE

(KAKIBIGEN CLAN).....APPLICANTS

VERSUS

GABRIEL KILIMO

KANDA CHESANG

(KARTUR CLAN).....RESPONDENTS

RULING

This is an application by *Murkomen Yano* and *Kiprotich Kipkore* of Kakibigen clan and *Gabriel Kilimo* and *Kanda Chesang* of Kartur clan.

The applicants pray for a temporary stay of execution of the Elders' Award and judgment and or decree and/or order in Iten SRMCC LDT No. 5 of 2006 pending hearing and determination of appeal. Moreover, that the application be allowed to appeal out of time.

The grounds for the application are that the applicant has a meritorious appeal and that the delay is not deliberate and therefore, excusable. That the respondent will not suffer any prejudice if the application is allowed.

In the supporting affidavit, the applicants state that the firm of Ngala & Company never informed the applicants when they ceased acting and therefore, they were surprised when an order of eviction was issued. They state that mistake of counsel should not be visited on the parties.

The respondents admit that Ngala & Company Advocates withdrew from acting for the applicants but add that their failure to act for applicants cannot be visited upon the respondents. Moreover, that the orders were issued in accordance with the law.

I have considered the application, replying affidavit and rival submissions and do find that the Marakwet Land Disputes Tribunal made an award on 21.7.2005. the award came for adoption as a judgment of the court on 12.11.2008 in the presence of the claimants and their counsel and in absence of the objectors and after consideration of the award, the court adopted the award as a judgment of court. The land in question was awarded to Kartur clan by court on 12.11.2008.

The dissatisfied party was to appeal to the High Court at that time within 30 days. The applicants failed to appeal within time as required by law. The only reason given for delay in appealing is the allegation that the applicants were let down by their lawyers.

I have looked at the application by Ngala & Company Advocates to cease acting dated 9.3.2010 and do find that the said Advocates appeared frustrated by the behavior of the applicants who failed to provide adequate instructions, failed to attend court or call on their Advocates whenever required, failed to pay legal fees.

I do find that it is a lame excuse for applicants to blame their lawyers for failure to take action.

It is settled law that the decision whether or not to extend the time for appealing is essentially discretionary. Courts take into consideration

the length of delay, reason for delay, chances of success and degree of prejudice. The delay in this matter between 12.11.2008 and the year 2014 which is 6 years since the decree was made. This delay is inadequate and inexcusable. Moreover, no proper explanation has been shown for the delay as it is a blame game between the applicants' lawyers and the applicant. It follows that there being no appeal, the application for stay of execution pending appeal is untenable. The application is therefore, dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF SEPTEMBER, 2017.

A. OMBWAYO

JUDGE