



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 193 OF 2014

ALFRED NZOKA KATHONDE1ST APPLICANT

VERONICAH WANJIKU NZOKA2ND APPLICANT

VERSUS

WILSON NJOROGE KAMAU1ST RESPONDENT

HENRY KIMARU KAMAU2ND RESPONDENT

SOLOMON NJOROGE KAMAU3RD RESPONDENT

RULING

1. In the Application dated 22nd November, 2016, the Applicants are seeking for the following orders:

- a. That the appeal herein be dismissed with costs for want of prosecution and failure to abide with conditions of stay granted by this court.***
- b. That costs (if awarded) be deducted from the amount already deposited in court vide Receipt No. 00292277 by the Applicants/Respondents herein.***
- c. That the original title Machakos/Mamba/130 be issued to the Applicants/Respondents herein forthwith.***
- d. That the Judgment in Civil Suit No. 324/2012 Chief Magistrate's Court dated 12th June, 2014 be implemented forthwith.***

2. The Application is supported by the Affidavit of the Applicant's advocate who has deponed that the Respondents were directed by the court to deliver the original Title Deed for Machakos/Mamba/130 to this court within thirty (30) days from the date of the Ruling.

3. According to the Applicants' advocate, the Respondents have not complied with the said order and that they also did not file the Record of Appeal within thirty (30) days.

4. In response, the Respondents/Applicants advocate deponed that the Appellants deposited the original Title Deed for the suit land as ordered by the court; that the Appellants requested for the proceedings and that the advocate kept visiting the registry to check on the progress of typed proceedings.

5. The parties filed their respective submissions and authorities which I have considered.

6. On 5th September, 2014, the Appellants/Respondents lodged the Memorandum of Appeal in which they challenged the decision of the learned Magistrate.

7. The Appellants/Respondents then filed an Application dated 11th September, 2014 in which they prayed for a stay of execution of the Ruling of the lower court.

8. In its Ruling, this court allowed the Appellants/Respondents' Application on condition that they deposit the original title documents in court within thirty (30) days. The Appellants/Respondents were also required to prepare the Record of Appeal within thirty (30) days.

9. The Appellants' advocate has annexed a letter dated 11th February, 2015 which shows that they forwarded the original Title Deed to the registry. The said Title Deed was received on 19th February, 2015, which was within thirty (30) days from the date of the Ruling.

10. The Appellants' advocate then made a follow-up on the proceedings by writing numerous letters to the Executive Officer. The letters which have been annexed on the Affidavit were received by the registry on 9th February, 2014, and 19th February, 2015. In the letter of 10th October, 2016, the Appellant made another request for the proceedings.

11. Considering that the Appellants could not have filed the Record of Appeal without the typed proceedings, the Appellants cannot be blamed for not having filed the Record of Appeal within thirty (30) days as ordered by the court.

12. In any event, the court never stated that the Appeal would lapse at the expiry of the thirty (30) days.

13. Considering that the proceedings of the court were certified on 9th February, 2017, and in view of the fact that the Appellant has now filed the Record of Appeal, the Appellants should be given an opportunity to ventilate their Appeal, and not to punish them for the delay that was caused by the registry.

14. For those reasons, I dismiss the Application dated 22nd November, 2016 with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF NOVEMBER, 2017.

O. A. ANGOTE

JUDGE