



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MERU
ELC MISC. APPLICATION NO. 19 OF 2007
ABDUB LIBAN.....APPELLANT /APPLICANT
VERSUS
JILLO GUYO.....RESPONDENT
RULING

1. The Notice of Motion dated 8th September, 2017 seeks the following orders:-

- a) Spent.
- b) That this honourable Court be pleased to validate this appeal as a valid Appeal and or admit the same out of time against the judgment of SPMC MARSABIT IN SPMCC No. 6 OF 2013 delivered on 21st June, 2017 despite being filed out of time.
- c) That pending the hearing and determination of this application a temporary order of stay of execution of the order and decree in Marsabit SPMCC No. 6 of 2013 be issued.
- d) That pending the hearing and determine of the appeal herein an order of stay be issued staying execution of the decree in SPMCC No. 6 OF 2013.
- e) That costs of this application be costs in the cause.

2. The ground in support of application are:-

- a) The appeal was filed out of time of the statutory period since the appellant was waiting for typed and certified copies of proceedings and Judgment.
- b) The delay in filing the appeal is not inordinate.
- c) The appellant didn't have the benefit of counsel on record.
- d) The respondent would not suffer prejudice which cannot be compensated in terms of cost.
- e) The respondent intends to commence execution of the decree and evict the appellant from his plot number 473A.

f) That it's only fair and just that the appeal herein be validated to give the applicant/appellant a chance to challenge the judgment herein.

g) That the appeal has high chances of success.

3. Applicant has also filed a Supporting Affidavit where he has deponed as follows:-

1. That this appeal emanates from judgment delivered on 5th October, 2017 emerging from SPMCC Marsabit No. 6 of 2013.

2. That the matter was heard and determined and judgment was delivered on 5th October 2017. Annexd and marked AL-01 is a copy of the said Judgment.

3. That Appellant was aggrieved by the said judgment and decided to launch an appeal challenging the judgment.

4. That the delay in filing of the appeal arose due to delay in typing the proceedings and judgment, until when Appellant sought services of M/S HALAKE RAMBO MUTHOGA & MUIRURI ADVOCATES who noted that the appeal's statutory period had lapsed. Annexed herewith and marked AI-02 is a copy of a letter 22nd June requesting for proceedings and judgments of civil case No. 6.of 2013.

5. That his land was surveyed in accordance to the law and notices issued to the members of public before the exercise began and Appellant was issued with a map number 743A.

4. The application was served but Respondent was absent on 13.11.17. However a Replying Affidavit was filed on 23.11.17 long after the Court had given a date for ruling on 13:12:17, I decline to consider this document primarily because the applicant will not have an opportunity of addressing the Court on the contents thereof.

5. I find that Applicant was in Court only a day after the Magistrate's Judgment of 21.06.17 was delivered. This is evident from annexure AL-02. It shows that Applicant was diligent in undertaking the process of appeal. I also note that he has typed proceedings and I believe the preparation of the record would not take long.

6. In the interest of justice I allow the application in the following terms.

1) A stay of execution is hereby issued in respect of the Judgment, and decree in Marsabit SPMCC NO. 6 of 2013 pending further orders from this Court.

2) Applicant is to file and serve his Memorandum of Appeal within 5 days from today failure to which the orders in prayer 1 will lapse.

3) The record of Appeal to be filled and served within 60 days from today.

4) The costs shall be in the cause in respect of this Misc. Application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 13TH DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-

CA: Janet

Kitheka H/B Halake for Plaintiff/Applicant Present

Defendant Absent

Hon. L. N. MBUGUA

ELC JUDGE