



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC PETITION NO. 11 OF 2011

IN THE MATTER OF: ARTICLES 21, 22 AND 23 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 40, 47, 60, 64, 65 AND 232 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL HIGH COURT PRACTICE RULES, 2006

BETWEEN

BEACHBAY HOLDINGS LTD.....PETITIONER

AND

1. RATIM RELATORS LTD

2. THE COMMISSIONER OF LANDS

3. THE ATTORNEY GENERAL.....RESPONDENTS

R U L I N G

1. The Application before me is the one dated 11th August, 2016. In the Application, the Petitioner is seeking for the following orders:-

(a) THAT the Notice of Appeal herein be struck out.

(b) THAT costs be provided for.

2. The Application is premised on the ground that since the filing of the Notice of Appeal, the 1st Respondent has never preferred an appeal; that the Applicant is anxious at the fate of the intended Appeal and that this matter ought to be settled once and for all.

4. The Application is supported by the Affidavit of David Pola who has deponed that although the court typed the proceedings and judgment, the Respondent has not bothered to collect a certified copy of the proceedings; that there is no reasonable explanation for the inordinate delay in the preparation of the Record of Appeal and that the said Notice of Appeal should be struck out.

5. Although the 1st Respondent was served with the Application, it did not file and pleadings opposing the Application.

5. In his oral submissions, the Applicant's advocate reiterated what is in the body of the Application.

6. This court delivered its Judgment in this matter on 6th March 2014. In the Judgment and the Decree, the court ordered the 1st Respondent to give vacant possession of portion numbers 10836 and 10837.

7. The 1st Respondent subsequently filed an Application for stay of execution pending the hearing and determination of the appeal, which Application was allowed by this court.

8. Although the 1st Respondent's counsel was notified by the Deputy Registrar vide a letter dated 2nd August, 2016 that the certified proceedings and Judgment were ready for collection, the 1st Respondent has never filed the Record of Appeal upto date.

9. It would appear from the record that the 1st Respondent is not interested in pursuing its appeal.

10. Having failed to respond to the Application, and in view of what I have observed above, I allow the Application dated 11th August, 2016 as prayed.

Dated, signed and delivered in Malindi this **14th** day of **November**, 2016.

O. A. Angote

Judge