



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC MISC. CIVIL APP. NO. 327 OF 2014

AHMED ABDALLA MOHAMED

KHALFAN ABDALLA

SALIM AL-AMIN

MBARUK ABDALLA SULEIMAN (Suing as trustees of

Mazrui Trust Land.....PLAINTIFF/APPELLANTS

VERSUS

SALIM ISLAM BASHMAKH.....DEFENDANT/RESPONDENT

RULING

1. The application dated 19th December, 2014 seeks for orders to enlarge time for the applicant to file appeal out of time against the ruling delivered on 30th May, 2014 in Mombasa Chief Magistrate's Civil Case No. 1516 of 2010 which upheld the preliminary objection dismissing the applicant's suit for want of jurisdiction. The applicants deposes in the supporting affidavit that they were not aware this order was made until 10th December, 2014. They depose the ruling was delivered in the absence of both parties and they have a good appeal. They have urged the Court to grant the orders sought.
2. The application is opposed by the respondent vide his grounds of opposition filed. One of the grounds is that this Court lacks jurisdiction to entertain this application as the suit property is situated in Kilifi County. The second objection is that the application is an abuse of the Court process as the Plaintiffs have filed another suit being Mombasa Hccc No. 204 of 2014 seeking eviction orders against the defendant.
3. The parties relied on the pleadings as filed. The order sought to be appealed against was made by a Mombasa Court. The opposition for want of this Court's geographical jurisdiction is therefore misplaced at this stage of the proceedings. On the merits of this application, the provisions of order 50 rule 6 provides thus;

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by summary notice the Court shall have power to enlarge time upon such terms (if any) as the Justice of the case require”.

4. The rules clothe the Court with powers to enlarge time on terms the Court deems just. The proceedings annexed show the ruling was delivered in the absence of both parties. What the

pleadings annexed did not disclose to the Court is whether the date of 30th May, 2014 was ever served on any of the parties but since it is not a matter challenged, this Court will not dwell on it. The respondent has issues why this application is filed yet the applicants have since commenced another suit vide Mombasa HCCC No. 204 of 2014 to evict the defendant. Again no pleadings were annexed in the case in the Court below or the cited case in the pleadings filed for this Court to determine whether the subject matter is the same and therefore make a determination on abuse of the Court process.

5. In the circumstances of this case, there is nothing tangible placed before Court for the Court to refuse to grant the order for enlargement of time. I do therefore grant prayer 1 of the motion allowing the applicants 14 days within which to file their appeal. Prayer (2) cannot be granted since no memo of appeal has been filed and the memo of appeal has to be filed on its independent file separate from this miscellaneous file. Without prejudice and in the event that it is true that civil suit No. 204 of 2014 relates to the same subject matter then this Court directs the applicants' counsel to endeavour to take such steps as would be necessary to avoid abusing this Court's process in terms of duplicity of cases. The cost of this application do abide the outcome of the intended appeal.

Ruling dated and delivered at Mombasa this **23rd** day of **June, 2015**

A. OMOLLO

JUDGE

In the presence of:-

Learned Counsel for the Plaintiffs/Applicants.....

Learned Counsel for the Defendant/Respondent

Court clerk