

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 23 OF 2013 (OS)

KAHINDI KAMBI MBITHA.....PLAINTIFF/APPLICANT

=VERSUS=

POLA CHARO KANIKI.....DEFENDANT/RESPONDENT

RULING

1. On 28th November 2014, I dismissed the Plaintiff's suit with costs.
2. The Plaintiff has now filed an application dated 18th December 2014 in which he is seeking for leave to Appeal out of time and stay of execution of the Judgment and for the status quo to be maintained.
3. The Application is premised on the ground that the Applicant has a meritorious Appeal with high chances of success and that if the stay of the execution is not granted, the Appeal will be rendered nugatory.
4. In her response, the Plaintiff deponed that the Defendant is seeking for a blanket injunction to stop her from enjoying her rights as the absolute owner of Kilifi/Mtondia/1893.
5. I have considered the brief submissions on record.
6. Having delivered its judgment, this court has no jurisdiction to grant to the Applicant leave to file an Appeal in the Court of Appeal out of time. Such leave can only be granted by the Court of Appeal pursuant to the provisions of the Court of Appeal Rules.
7. This court dismissed the Plaintiff's suit. In the suit, the Plaintiff sought for an order to sub divide the suit property into two portions, and one of the two portions to be registered in his favour.
8. Having dismissed the suit, there is no order capable of execution. Consequently, this court cannot stay that that cannot be executed. Staying the Judgment will be an act in futility.
9. If the Applicant's intention is to obtain an order of injunction pending the filing and prosecution of the Appeal, then he should move the Court of Appeal for such an order and not this court. This court cannot grant an order of status quo or injunction more so where an appeal has not even been filed.
10. For those reasons, I dismiss the Application dated 18th December 2014 with costs.

Dated and delivered in Malindi this 11th day of September 2015.

O. A. Angote

Judge