



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LANDS COURT AT MERU

E & L CASE NO 68 OF 2012

JOSEPH NYAMUPLAINTIFF

VERSUS

SAMWEL M'RWANDA.....1ST DEFENDANT/RESPONDENT

M'MUKIRA IKOTHA2ND DEFENDANT/RESPONDENT

THE D.L.A.O IGEMBE DISTRICT.....3RD DEFENDANT/RESPONDENT

THE ATTORNEY GENERAL.....4TH DEFENDANT/RESPONDENT

RULING

This application by the Plaintiff is dated 14th September, 2015. The applicant says that the application is predicated upon Section 7 of the Appellate Jurisdiction Act, Order 51 Rule 1 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act, Rule (3) (1) & (2) of the High Court Practice Procedure Rules and all other enabling provisions of the law. The application seeks the following orders:-

1. ***THAT the Honourable Court be pleased to CERTIFY this application as Urgent and hear the same ex-parte in the first instance.***
2. ***THAT the Honourable Court be pleased to grant the applicant leave to appeal out of time.***
3. ***THAT the Honourable Court be pleased to extend the time within which the appeal herein should have been filed.***
4. ***THAT the annexed draft Notice Of Appeal be filed out of time and the same be deemed as property filed.***
5. ***THAT the Court be pleased to order Stay Of Execution of the judgement in the High Court of Kenya at Meru ELC CASE No. 68 of 2012 delivered on 23rd July 2015 pending the hearing and determination of the applicants' appeal against the same.***
6. ***THAT the Honourable Court be pleased to grant a stay of any further proceedings in the High Court of Kenya at Meru ELC CASE No. 68 of 2012 pending the hearing and determination of the applicants' appeal against the same.***

7. ***THAT*** the cost of this application be in the cause.

The application has proffered the following grounds

- a) ***THAT*** judgement was delivered on 23rd July, 2015 and soon thereafter, the High Court Vacation commenced with the registry staff refusing to accept the Notice of Appeal.
- b) ***THAT*** the Plaintiff instructed our firm very late after receiving a certified copy of the judgement from his previous Advocates on record out of the appeal time.
- c) ***THAT*** the applicant is dissatisfied with the judgement of the Court herein High Court of Kenya at Meru Environment and Land Case No 68 of 2012 and is desirous of challenging the said judgement.
- d) ***THAT*** the applicants have a good and arguable appeal.
- e) ***THAT*** the appeal has high chance of success.
- f) ***THAT*** the applicant herein is entitled in law to be given an opportunity to appeal against the judgement that he feels has infringed on his rights.

When the application came up for interpartes hearing on 30/09/2015, Mr. Mutuma told the Court that he came on record after the time within which a Notice of Appeal should have been filed had expired. He submitted that the fact that the previous Counsel had disagreed with the Plaintiff should not be used to decide against the Plaintiff. He said that his Client was 76 years old.

Mr. Meenye, for the defendants told the Court that the Plaintiff had offered no cogent reason to explain the delay in filing an appeal within the stipulated time. He wondered what the prayer for Stay Of Execution of this Court's Judgement delivered on 23rd July, 2015 meant as the defendants were at all times in occupation of their portions of land. He challenged the Plaintiff's Advocate to dispute this fact.

He submitted that since the Court had merely found that the Plaintiff owned only Parcel No Athiru Ruujine Ndoleli Adjudication Scheme 225, that the 1st Defendant owned Parcel No 6044 and that the 2nd Defendant owned parcel No. 10411, there was nothing to be stayed as parties occupied their respective parcels of land.

Mr. Kirima urged the Court to dismiss the application with costs to the Defendants.

I have carefully considered the parties pleadings and their respective submissions.

In ground (a) of the grounds supporting this application, the Plaintiff laconically states that the Registry staff refused to accept a notice of appeal. This claim is not supported by the Plaintiff's Supporting Affidavit.

The claim by the Plaintiff's Advocate in his Oral Submissions on 30/09/2015 that the Plaintiff had disagreed with his Advocate is not mentioned in his supporting affidavit. This Submission may be an afterthought introduced at the Oral Submissions stage.

It is not clear to me what the Prayer for Stay Of Execution of this Court's Judgement delivered on 23rd July, 2015 means as the parties occupy their respective Parcels of land. However, I do not need to say anything more regarding this prayer, as in his submissions, the Plaintiff did not prosecute this prayer.

I find that the Plaintiff has not satisfied this Court that he has good and sufficient cause for not filing the appeal in time. **Prayers 2,3,4,5,6, and 7 of the application are dismissed.**

Costs are awarded to the defendants.

It is so ordered.

Delivered in Open Court at Meru This 27th day of October, 2015 in the presence of:

CC. Daniel /Lilian

Mutuma for Plaintiff

Kirima for 1st and 2nd Defendants

P. M. NJOROGE

JUDGE