



IN THE COURT OF APPEAL

AT MALINDI

(CORAM: OUKO, (P), KARANJA & GATEMBU, JJ. A.)

CIVIL APPEAL (APPLICATION) NO. 33 OF 2019

BETWEEN

SHAMI DESPAL WADHWA

(as legal representative of the Estate of

DESPAL OMPRAKASH WADHWA) APPLICANT

AND

1. HABIB ABU MOHAMED1ST RESPONDENT

2. ABDALLA MWARINGA MAYE2ND RESPONDENT

3. IBRAHIM MUKHTAR ABASHEIKH3RD RESPONDENT

4. TAUHIDA TAHIR SHEIKH4TH RESPONDENT

5. ATTORNEY GENERAL.....5TH RESPONDENT

(Being an application for orders staying the further hearing of the main suit and all further proceedings

in

Malindi E.L.C. No. 51 of 2012)

RULING OF THE COURT

On 5th February, 2019 Olola, J. expunged the applicant's additional list of documents which was filed, without leave of the court on 31st January, 2019 in E.L.C No. 51 of 2012.

Aggrieved by the decision, the applicant filed this appeal and has sought, in the meantime, by the motion dated 5th April, 2019, an order to stay further proceedings in the aforementioned suit.

In particular, the applicant depones that if the defence is heard on 11th April, 2019, as scheduled, he will have been locked out of the proceedings. He believed that the expunged list contained crucial documentary evidence which would aid his case; and that should the defence hearing proceed without such evidence, this appeal would be rendered nugatory.

Apparently, after his list of documents was expunged, the applicant, by an application dated 6th March, 2019 in the said suit prayed for leave to file the very list of documents that had been expunged, to re-open his case which had been closed on 5th February, 2019, and to recall one witness.

However, the learned Judge on 15th October, 2019 dispensed with the hearing of the said application to pave way for the defence hearing

which had been moved to 21st November, 2019. The applicant was not happy with that outcome and filed another motion, Civil Application No. 101 of 2019, dated 10th May, 2019 before this Court to stay the defence hearing. He subsequently lodged Civil Appeal No. 148 of 2019 to challenge the decision.

The aforementioned motion was heard and determined by this Court on 24th April, 2020. The Court observed that the motion had been overtaken by events since by the time it came up for hearing the defence hearing was already underway.

As the current motion similarly seeks to prevent the commencement of the very defence hearing, which was found to have been overtaken by events, it is equally idle and to grant the prayers in the application will serve no practical purpose. We think, from the numerous applications the applicant has brought, that he is abusing the process of the court.

In the result, finding no substance in the motion, we dismiss it.

Costs shall be in the appeal.

Dated and delivered at Nairobi this 19th day of March, 2021.

W. OUKO, (P)

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JUDGE OF APPEAL

W. KARANJA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, (FCIArb)

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR