



Mulewa v Mhambi (As Administrator Ad Litem of the Estate of Charo Mhambi Kaloki) (Environment and Land Appeal E023 of 2024) [2024] KEELC 13949 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13949 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E023 OF 2024
FM NJOROGE, J
DECEMBER 18, 2024**

BETWEEN

GLADYS ANDREW MULEWA APPLICANT

AND

KAHINDI CHARO MHAMBI (AS ADMINISTRATOR AD LITEM OF THE ESTATE OF CHARO MHAMBI KALOKI) RESPONDENT

RULING

1. The appellant filed an application dated 18/10/2024 in which he seeks leave to appeal out of time against the whole of the judgment of J. Ongondo SPM delivered on 28/5/2024 in Malindi Land Case No 26 of 2018. The grounds on which it is premised set out at its foot and they are elaborated on in the applicant’s Counsel’s supporting affidavit attached to the motion. They are namely: that the applicant is the beneficial owner of a share of land portion no Kilifi/Jilore /154 having purchased the same for valuable consideration; the lower court delivered its judgment on 28/5/2024 in favour of the respondent granting him possession of the property; stay of execution as well as a restraining order were sought in a motion dated 31/5/24, but by oversight on the part of counsel dealing, an order of leave to appeal out of time was not sought therein, hence the present application to cure the defect. That application was dismissed for non attendance on 19/11/2024 in the absence of both parties.
2. It has come to the attention of this court that an error occurred which none of the parties in the case pointed out, and which may have an adverse effect on the administration of justice in this case, when the court fixed the ruling on the first application dated 31/5/2024 for delivery of ruling on 18/12/2024 while the application dated 18/10/2024 had not been heard. The file was retained in chambers for the preparation of the ruling in the application dated 31/5/2024 and this court is of the view that if the file was to leave the chambers for any hearing or any other reasons all the parties deserved to be informed.



3. For the foregoing reasons and by the inherent power of the court and in the interests of justice for all parties, I order that order of dismissal of the application dated 18/10/2024 recorded on 19/11/2024 is hereby vacated *ex debito* justitiae. Consequently, as earlier intended the ruling on the application dated 31/5/2024 needs to be and is hereby deferred till after the application dated 18/10/2024 has been deferred, to be delivered simultaneously with or after the ruling in the application dated 18/10/24 has been delivered. This appeal shall be listed for mention on 16/1/2025 for directions regarding both applications.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 18TH DAY OF DECEMBER 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

