



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. E199 OF 2020**

**HOUSING FINANCE COMPANY OF KENYA LIMITED.....APPLICANT**

**VERSUS**

**STELLA KAARI MURUNGI.....1<sup>ST</sup> RESPONDENT**

**FRANKLIN MWENDWA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application dated 7<sup>th</sup> September, 2020 seeks orders that:

**“1. That the honourable court be pleased to admit the Appeal filed herein out of time and the same be deemed as properly filed.**

**2. That the costs of this application be in the cause.”**

2. The application is premised on the grounds set out on the face of the application and is supported by the affidavit sworn by the counsel for the Applicant. The delay in filing the Appeal is blamed on the outbreak of the COVID 19 Pandemic which caused the closure of the courts. It is further averred that the ruling herein was delivered without notice to the Applicant’s counsel. That following inquiries it turned out that the Ruling Notice had been sent to the wrong address. That after obtaining a copy of the ruling the Applicant was informed of the same and instructed the counsel to file an Appeal. It is further stated that the Appeal is arguable and ought to be given a chance to proceed on merit.

3. The application is opposed. It is stated in the replying affidavit that the application is incompetent and made in bad faith as the Appeal will delay the hearing of the primary suit. That no plausible explanation has been given for the delay. It is further stated that the Appeal has no chance of success. The court was urged to dismiss the application.

4. I have considered the application, the response to the same and the submissions filed by the respective counsel for the parties.

5. On enlargement of time, the principles applicable were set out by the Supreme Court of Kenya in the **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** as follows:

**“This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of such discretion:**

**1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;**

**2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;**

**3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;**

**4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.**

**5. Whether there will be any prejudice suffered by the respondents if the extension is granted;**

**6. Whether the application has been brought without undue delay; and**

**7. Whether in certain cases, like election petitions, public interest should be consideration for extending time.”**

6. The ruling that is the subject of the application herein was delivered on 29<sup>th</sup> May, 2020. The instant application was filed about four months later on 14<sup>th</sup> September, 2020. However, the delay has been explained to the satisfaction of the court. This court takes judicial notice of the outbreak of the COVID 19 Pandemic and the unprecedented challenges it has posed in the administration of justice.

7. In the upshot, the application is allowed with costs in cause. The requisite court fees for the filing of the Appeal to be paid within 14 days from the date hereof.

Date, signed and delivered at Nairobi this 20<sup>th</sup> day of May, 2021

**B. THURANIRA JADEN**

**JUDGE**