



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISC. CIVIL APPLICATION NO. E018 OF 2020

BETWEEN

HARRISON NDIRANGU RINGU.....APPLICANT

VS

CM (suing as the mother and the personal representative of the

estate of BNM) (deceased).....RESPONDENT

RULING

1. **HARRISON NDIRANGU RINGU (Harrison)** has filed a notice of motion application dated 23rd November, 2020 seeking leave to this Court to file an appeal out of time against the judgment in Thika Chief Magistrate’s Court Civil Case No. 634B of 2015. That judgment was delivered on 29th October, 2019. By that judgment Harrison was found liable for causing death of the child **BNM**, deceased, and the child of **CMM (C)**. The trial court awarded Caroline Kshs.1,368,750/= in damages.

2. **Section 79G** of the Civil Procedure Act provides an appeal from the subordinate court to the High Court should be filed within 30 days of the judgment. That section stipulates as follows:-

“79G. Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

3. It should be recognized from the provisions of Section 79G the High Court may admit an appeal filed out of time if the applicant satisfies the court that he/she had good and sufficient cause for not filing an appeal out of time. The court’s discretion to admit an appeal filed out of 30 days period is therefore fettered by the requirement of the applicant showing justifiable reason for delay. In this case, Harrison delayed for over one year. Harrison in support of his application deponed in his affidavit that he instructed *Njongoro & Co. Advocates*, who acted for him during the trial to file his appeal. He further deponed that he was unaware that the said law firm failed to file his appeal and only became aware when auctioneers proclaimed his movable goods for attachment. Harrison then deponed that he had instructed the law firm *Thaama Mbugua Associates Advocates* to act for him instead of his previous advocates. Harrison deponed:-

“That I pray that the mistake of Njongoro & Co. Advocates how are on record for me in Civil Suit No.634B of 2015 at Thika Law Courts ought not to be visited on me.”

4. The application is opposed by C who termed the application as an afterthought and stated that it was brought in bad faith having been filed after inordinate delay.

ANALYSIS

5. I will begin by citing the Court of Appeal decision, per *Makhandia J.A.*, in the case **GERALD KITHU MUCHANJE VS. CATHERIN MUTHONI NGARE & ANOTHER (2020) eKLR** thus:-

“LEO SILA MUTISO VS ROSE HELLEN WANGARI (supra) which is the locus classicus, laid down the parameters as follows:-

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”(Emphasis provided)

...In **ANDREW KIPLAGAT CHEMARINGO V PAUL KIPKORIR KIBET [2018] EKL** this Court stated:-

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

6. Borrowing from the jurisprudence of that case Harrison needed to have stated when indeed, if at all, he instructed his previous advocates to file his appeal. The trial court’s judgment was delivered on 29th October, 2019. Harrison in his affidavit stated that he instructed his former advocate to file an appeal against the trial court’s judgment. This Court needed Harrison to state more than that he instructed his former advocate to file his appeal. Harrison should have stated when in relation to the date when the trial court delivered its judgment he gave those instructions to his former advocate. With that information this Court would have been able to gauge whether it was he or his former advocate who failed to file his appeal in time that is within 30 days of judgment.

7. If indeed Harrison instructed his former advocates to file his appeal before the expiry of the 30 days period provided under section 79G he needed to show that he had continued intention to appeal which continued intention would have been supported by his actions between the period when judgment was entered and when he was awoken from his slumber by the auctioneers. Harrison needed to demonstrate diligence in following up his appeal, after all the appeal belonged to him and not his former advocate.

8. Harrison has failed to prove that he indeed instructed his former advocate to file an appeal and has failed to show diligence in following up his appeal. In my opinion, the diligence required from one who wishes to appeal must be measured against the right of a successful litigant, who for more than a year was unaware of Harrison’s intention to appeal and must be measured against the need for finality of litigation. In my opinion, Harrison must bear the responsibility of his failure to file his appeal in time. The application is without merit.

DISPOSITION

9. The notice of motion dated 23rd November, 2020 seeking leave to file an appeal out of time is hereby dismissed.

RULING DATED AND DELIVERED AT KIAMBU THIS 23RD DAY OF SEPTEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

For the Applicant: N/A

For the Respondent : M/A

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE