



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CIVIL APPEAL NO.13 OF 2019

NANCY CHEBET.....APPELLANT

VERSUS

HEZRON SOI (Sued as the Administrator of the Estate of

WESLEY KIPRONO KORIR deceased)....RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 6th November 2019 brought by NANCY CHEBET under Order 51 Rule 1 and Order 50 Rules 5, 6 and 7 of the Civil Procedure Rules 2010, and sections 1A, 1B and 317 of the Civil Procedure Act (Cap.21) under certificate of urgency.

2. The substantive prayers are prayers 3 and 4 which state as follows -

1. (spent)

2. (spent)

3. That the honourable court be pleased to extend time within which the appellant shall deposit the sum of Kshs.500,000/= in court as security by 30 days.

4. That the costs of this application to abide the outcome of the appeal

3. The application has grounds on the face of the Notice of Motion that the counsel who held brief for counsel for the appellant during the ruling informed them that the amount of deposit for security was Kshs.400,000/= instead of Kshs.500,000/= and that the appellant was only informed of the correct amount at the registry after she had managed to raise Kshs.400,000/= through friends, and that as a consequence she could not comply with the deadline for payment of the deposit and needed an extension of 30 more days to raise Kshs.100,000/=.

4. The application was filed with an affidavit sworn by the appellant on 6th November 2019 amplifying the grounds and circumstances of the application, and emphasizing that the respondent would not suffer prejudice if the extension of time sought was granted by the court.

5. The application is opposed through a replying affidavit sworn on 19th November 2018 (should be 2019) by Hezron Soi the respondent in which it was deponed that the appellant had initially filed an application for stay of execution only after auctioneers had attempted to attach her property, and that the appellant was merely playing mischief through the present application.

6. Counsel who appeared in court Mr. Langat for the appellant and Mr. Kipkoeh for the respondent opted not to make any submissions and asked the court to deliver its ruling.

7. This is an application for extension of the time to comply with the court's order. The appellant asks for the extension by 30 days to comply with the court order to deposit the amount of Kshs.500,000/= in court as security. The appellant says that she needs the 30 more days to raise Kshs.100,000/= as she was misled by counsel that the amount of deposit required was Kshs.400,000/=

8. The respondent has opposed the application on the grounds that this application is mischievous and that the respondent is entitled to the fruits of the judgment of the trial court which was delivered some time ago.

9. Under section 95 of the Civil Procedure Act (Cap 21), the court has power to extend time for complying with any court order. The section provides as follows –

“95. Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

10. With regard to court orders on stay of execution, Order 50 Rule 6 of the Civil Procedure Rules provides as follows –

6. Where a limited time has been fixed for taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed; provided that the costs of any application to extend such time and for any orders made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

11. It is thus clear to me from the provisions of section 95 of the Civil Procedure Act of the Civil Procedure Rules and Order 50 Rule 6 above that this court has power to extend the period of time ordered by this court for compliance with any act.

12. The appellant has given reasons that she was misinformed by the advocate about the amount required for the deposit for security. She has asked for time extension of 30 days to raise the additional Kshs.100,000/=. Though the respondent has opposed the request, in my view it is quite possible that she was given the wrong information. Humans, including lawyers make mistakes. The period she requests is also not too long, as the appeal has not been heard, and I find no prejudice that will be caused to the respondent.

13. In the circumstances of this matter therefore, I will allow the request for extension of time. The costs of the application will abide the results of the appeal.

14. Consequently, I allow the application and grant the appellant an extension of 30 days from the date of this ruling to deposit the amount of Kshs.500,000/= as security for the stay of execution of judgment or decree already granted by this court. The costs of the application will abide the results of the appeal.

Dated this 29th day of April, 2020

GEORGE DULU

JUDGE

Delivered through video conferencing in the presence of Mr. Langat court assistant, Mr. Musyoka ICT officer, Mr. Langat for the appellant and Mr. Mugumya holding brief for Ms Rotich for the respondent.