



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC. APPL. NO. 702 OF 2019

EQUITY BANK KENYA LIMITED....APPLICANT

VERSUS

PETER GICHUKI KING'ARA.....RESPONDENT

RULING

1. The application dated 24th October, 2019 principally seeks orders **that this honourable court be pleased to extend time within which the applicant may file his intended appeal against the ruling delivered by the Hon. Mrs. Mmasi, SPM on 23rd August, 2019 in Nairobi CMCC No.4104 of 2019 Peter GichukiKing'ara v Equity Bank Kenya Limited.**

2. Secondly, that there be a stay of proceedings in **Nairobi CMCC No. 4104 of 2019 – Peter GichukiKing'ara v Equity Bank Kenya limited pending the hearing and determination of the intended appeal against the ruling in the primary suit to be lodged by the applicant in the High Court.**

3. It is stated in the grounds and the affidavit in support of the application that the primary suit arose following an attempt by the Applicant to exercise its statutory power of sale over land LR No. KARATINA MUNICIPALITY BLOCK 1/18 and LR No. KARATINA MUNICIPALITY 121. That the Respondent filed an application in the lower court seeking to have the Applicant herein restrained from selling the suit property and from issuing any Notice to the Credit Reference Bureau in respect of the outstanding loan. That the lower court allowed the said application, made orders for maintenance of *status quo* and thereby deprived the Applicant herein of the opportunity to realize its securities and that therefore the Applicant continues to suffer irreparable financial loss.

4. The delay in filing the Appeal is blamed on the time taken to trace the whereabouts of the Respondent herein to seek further instructions. It is further stated that the delay was not deliberate or intentional and that the Appeal has high chances of success.

5. The application is opposed. It is stated in the replying affidavit that the application is an afterthought, filed in bad faith and meant to delay the hearing and determination of the suit. That the delay in filing the Appeal is inordinate and has not been sufficiently explained. That the release of the security prematurely without awaiting the hearing and determination of the suit will greatly prejudice the Respondent. That the Applicant will not suffer any prejudice since the suit properties are charged in its favour, is still holding the title documents and can be compensated by an award of damages. That if the Applicant should realize the securities the Respondent will suffer irreparable loss that cannot be adequately compensated by an award of damages.

6. Section 79G of the Civil Procedure Act provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of 30 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.”

(See also Section 59 of the Interpretation and General Provisions Act and Order 50 rule 6 Civil Procedure Rules and Section 3A Section 95 of Civil Procedure Act Cap 21 Laws of Kenya)

7. On enlargement of time, the principles applicable were set out by the Supreme Court of Kenya in the **Nicholas KiptooArap 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.”**

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

9. The lower court ruling was delivered on 23rd August, 2019. The application at hand was filed on 23rd November, 2019. The delay has not been satisfactorily explained by the Applicant. It is not explained what steps the Applicant took in the attempts to reach out to the Respondent herein and why the said attempts failed. There is no evidence of any attempts to negotiate the matter. This being an appeal on a matter that is ongoing before the trial court, the Applicant ought to have moved to this court without any delay.

10. The intended Appeal is on a ruling in an interlocutory application. It is apparent that the Applicant holds the title documents to the property in question. The parties have their right of Appeal after the primary suit is determined. There will therefore be no prejudice as any dissatisfied party is at liberty to exercise the right of Appeal.

11. The upshot is that the application has no merits and is dismissed with costs.

Date, signed and delivered at Nairobi this 24th day of Sept., 2020

B. THURANIRA JADEN

JUDGE