



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 292 OF 2016

ROBERT GATHIGAINI NJAGI.....APPELLANT

- V E R S U S -

JOHN MUTUA MANDA.....RESPONDENT

RULING

1) This ruling is the outcome of two motions. The first motion is dated 24.1.2017 and taken out by John Mutua Manda, the respondent herein. In the aforesaid motion, the appellant sought for:

- 1. That the applicant's purported appeal dated 23rd June, 2017 herein be struck out with costs.***
- 2. That the costs of this application be borne by the applicant.***

2) The motion is supported by the affidavit of John Mutua Manda,

3) When served with the aforesaid motion, Robert Githiagana Njagi, the appellant herein, filed a notice of preliminary objection dated 15.2.2018 to oppose the motion. The appellant contemporaneously also filed the motion dated 15.2.2018 whereof he sought for

- i. That this honourable court be pleased to enlarge time within which the applicant/appellant was required to file a memorandum of appeal to the High Court against the ruling at the Chief Magistrate's Court at Milimani Nairobi before Mrs. M. Chesang R. M. Delivered on the 5th May, 2016 in Nairobi CMCC No. 7564 of 2014.***
- ii. That leave to appeal having been granted on 3rd February 2017, the memorandum of appeal dated 2nd June 2016 and the subsequent record of appeal filed on 5th July 2017 be deemed as properly filed.***
- iii. That the appeal be certified as ready for hearing and directions be given as to the manner of hearing and disposal of the same.***
- iv. That the costs of this application be provided for.***

4) The appellant filed an affidavit he swore in support of the motion while the respondent filed a replying affidavit to oppose the application.

5) The two motions were heard together. Mr. Khakula, learned advocate for the respondent, urged this court to have the appeal dismissed because the same was filed without leave of court. The learned advocate appreciated the fact that the appellant had prior to filing the appeal obtained leave to file the appeal out of time. The record shows that the appellant was granted leave to appeal out of time vide the ruling of Hon. Gichobi, learned Senior Resident Magistrate delivered on 3rd February 2017. The appellant filed this appeal on 3rd June 2016. Basically, the appellant obtained leave to appeal out of time after filing the appeal. It is clear in my mind that the respondent's motion lacks merit. The same is dismissed with each party bearing its own costs.

6) In the motion dated 15.2.2018, the appellant had sought for leave to appeal out of time. I have already stated that the appellant obtained leave from the trial court which appeared to have deemed this appeal to be filed out of time with leave of court. Therefore the motion dated 15.2.2018 which purports to seek for orders which have already been granted lacks. The same in my view is superfluous. The same is dismissed with no order as to costs.

Dated, Signed and Delivered in open court this 25th day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondents