



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

MISC APPLICATION NO. 62 OF 2016

JAPHET NDAGARA MUGAMBI.....APPLICANT

VERSUS

MARK MUCEE MUNYAMBU.....RESPONDENT

RULING

In the miscellaneous application filed in court on 7/9/2016, the applicant prays for orders that;

The Honourable Court be pleased to extend the time for the applicant/ appellant to file appeal out of time.

The grounds in support of the application are that;

- i. The time for filing the appeal expired while the proceedings were being typed.
- ii. The appellant could not file an appeal without the proceedings.

The applicant has filed a supporting affidavit dated 6/9/2016 where he has deponed that;

- a. He was aggrieved by the judgment in Marimanti S.R.MC. NO.9 of 2013, thus his appeal as per annexure J.N.I (the intended memorandum of appeal).
- b. That he was not able to file the appeal within the stipulated time as time had expired when the proceedings were being typed.
- c. That he applied for proceedings on 4/4/2016 but the same were not supplied until 1/9/2016
- d. That applicant is desirous to pursue the appeal.

The application is opposed via the replying affidavit of the respondent filed in court on 5/10/2016 where it is stated that;

- I. The application lacks merit
- II. The applicant has not given any good and sufficient cause for not filing the appeal in time.
- III. The judgment in marimanti PMCC NO.9 of 2013 was delivered on 3/4/2016 and that a typed certified copy of the judgment was ready by then.

IV. The applicant didn't require typed proceedings to enable him file an appeal.

V. The applicant has not annexed the typed proceedings and the or any document to show that he applied for the proceedings immediately upon judgment.

Directions were taken on 19/12/2016 for the application to be canvassed by way of written submissions. The court has perused the said submissions which are a retaliation of what each side has expounded in their affidavits. Having weighed all the arguments raised herein i am inclined to agree with the averments made by the respondent to the effect that there are no good and or sufficient reasons as to why the applicant didn't file the appeal in time. This decision has been arrived at on account of the following findings;

1. There is no document or evidence to show that applicant applied for proceedings on 4/4/2016. There is no annexure marked J.N.2 as alleged in the supporting affidavit of the applicant.

2. The applicant certainly did not require typed proceedings to enable him file an appeal. He ought to have filed the appeal awaiting typing of proceedings.

3. There is no evidence that applicant intends to appeal. The alleged intended memorandum of appeal referred to as J.N.1 in the applicants affidavit is actually not there.

I therefore conclude that applicant has not demonstrated a level of seriousness that would entail the granting of the orders. In particular I find that applicant has not been candid. Instead he appears to bring mischief in these proceedings by making reference to non existent documents. All in all, **I find that the application has no merits and the same is dismissed with costs to the Respondent.**

It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 23RD DAY OF FEBRUARY, 2017 IN THE PRESENCE OF

CA: Mungai/Kananu

Gitonga for the Respondent

Mutuma Mwenda for the Applicant

L.N. MBUGUA

JUDGE