



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MISC. CIVIL APPLICATION NO. 3 OF 2011(J.R.)

KIMACHIA FARMERS CO-OPERATIVE SOCIETY.....EX-PARTE APPLICANT

VERSUS

LAND ADJUDICATION OFFICER, TIGANIA WEST.....RESPONDENT

ROBERT RUKUNGA.....INTERESTED PARTY

RULING

1. In the notice of motion filed on 18/10/2016 it is prayed that;

I. Spent.

II. The *ex-parte* applicant be granted extension of time within which to file a notice of appeal out of time.

III. Cost of the application be in the intended appeal.

2. The application is supported by the annexed affidavit sworn by **ROBERT KIRIAMANA LITHARA** where he states;

i. **THAT** judgment was delivered against the *ex-parte* applicant on **14.09.2016** and on the same date, it promptly instructed its then counsel on record to file a notice of appeal and pursue it.

ii. **THAT** the said counsel inexplicably failed to file a notice of appeal as instructed, and did not notify the *ex-parte* applicant of such failure.

iii. **THAT** the *ex-parte* applicant became aware that the notice of appeal was not filed when its secretary-manager visited its former counsel's office on **14.10.2016**.

iv. **THAT** 14.10.2016 the present advocates were instructed to start the appeal process and they did so promptly.

v. **THAT** this matter is very sensitive in that it concerns land where the applicant's factory is built.

3. Basically, what applicant is stating is that it is their former advocates who failed to file the notice of appeal in time.

4.The application is opposed via the affidavit of Robert Rukunga, the interested party.

5.On 28.11.2016, directions were given for the application to be canvassed by way of written submission

6.I have weighed all the arguments raised herein. I have also considered the submissions and the authorities of the parties.

This court is dealing with only one issue, that of delay. Whether the applicant acted with reasonable speed, whether the delay is in- ordinate and in-excusable. I find that the applicant has given the sequence of how the delay occurred. Applicant had instructed his advocate to appeal but they did not.

7. In **Civil Application No. 43 of 2015 Mwathi Kabaa & others versus David Murimi Muriuki** cited by the interested parties, the court was dealing with a situation where “even though the delay appears to be a relatively short one, there is not a word of explanation given...”. And in the case **of Michael Michuki Roibuni** also quoted by the interested party, the court was stating that it was good practice to give the notice of appeal even as a party was waiting for the time to be extended.

8.I find that the applicant has on the other hand cited authorities relevant to the matters at hand. The primary concern of the court is to do justice. The present application was filed on 18.10.2016 just about a month and four days from the date the judgment was delivered. I find that the delay in filling the notice of appeal is neither in ordinate nor in excusable.

9.The application is allowed in the following terms,

1. The notice of appeal to be filed within 7 days from the date of delivery of this ruling.

2. Applicant is to pay cost of this application.

DELIVERED, DATED AND SIGNED AT MERU THIS 26TH DAY OF JULY, 2017 IN THE PRESENCE OF:

C:A Janet

Calpeters Mbaabu for applicant present

Mwiti for Interested Party and Respondent present

HON. L. N. MBUGUA

JUDGE