



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC APPLICATION 211 OF 2016
FLORENCE MUMBUA JOSEPHAPPLICANT
VERSUS
JULIUS NZIOKA.....RESPONDENT

RULING

The Notice of Motion dated 5th day of May, 2016 brought by the Applicant under Section 79G, order 42 Rule 6, Order 22 Rule 22, Order 50 Rule 6 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all enabling provision of the law is for consideration. In a nutshell, the applicant is seeking leave to lodge an appeal out of time against the judgment and decree issued by Honourable Chesang, Ms in Milimani CMCC No. 3018 of 2014 on 14th November, 2015. He made an application for review of the said Judgment on 14th October, 2015 a determination of which was delivered on 11th April, 2016 against the Applicant. The Applicant opted for an appeal which is the subject of this application.

In his Replying affidavit, the Respondent opposed this application on the basis that the same is defective, vexatious, unmerited and unfounded. He argued that the mere existence of an application for review did not impede filling an appeal within the stipulated time.

Before delving into this matter, it is imperatively important to re-state the reasons why appeals are lodged within time limits is to insulate parties against prejudice that usually arises from delayed hearing and determinations of Appeals. This is sanctified in law. Thus, Section 79G of the Civil Procedure Act provides “every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against... 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”

As can be seen on the face of the application, the main reason for the delay in filing the appeal is the review application which had been made by the Applicant soon after the judgment. An application for review touches on the following spheres.

- a. An error apparent on the face of the record.
- b. Discovery of new evidence.
- c. Any sufficient reason.

From the above, it is clear that the grounds for review are distinct and specific. An appeal on the other hand, more particularly, from the subordinate court to the High Court is a first appeal and cuts across on

both matters of law and facts. It is wide and not restricted as in the case of a review.

The Appellant's delay is attributed to the review application which was pending before the trial court. The order whether or not to grant extension of time or leave to file and serve an appeal out of time is discretionary which must be exercised judiciously with a view to doing justice. See the case of **Edward Njane Nganaga & another Versus Damaris Wanjiku Kamau & another (2016) eKLR**. Each case depends on its own merits. For the court to exercise its discretion in favour of the Applicant, the latter must demonstrate to the court that the delay is not inordinate and where it is inordinate, the applicant must give plausible explanation to the satisfaction of the court why it occurred.

In this case, the applicant is seeking to introduce an appeal a year after the expiry of time. His reasons are premised on the application for review. I am not convinced that this is excusable. This application is therefore an afterthought, vexatious and cannot stand. I proceed to disallow the same.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 22nd Day of September, 2017.

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L. NJUGUNA

JUDGE

In the Presence of

..... for the Applicant

..... for the Respondent