



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC MISC. APPLICATION NO. E013 OF 2021

ERASTUS KENNETH MUNGANIA.....APPLICANT

VERSUS

LEONARD MUGAMBI.....RESPONDENT

RULING

1. Before the court is a notice of motion dated 18.3.2021 seeking for stay of execution of the lower court judgment or decree made on 27.11.2019 and enlargement of time to appeal against the said judgment.

2. The application is supported by an affidavit of Erastus Kenneth Mungania sworn on 18.3.2021. The reasons given are that the former advocates on record for the applicant at the lower court did not inform him of the outcome of the judgment on time until an issue of contempt of court came up and that unless the court allows the application he stands to be prejudiced.

3. The principle of granting stay are the applicant has to demonstrate the application has been made without inordinate delay, there will be substantial loss if stay is not granted and lastly there is an offer for security for the due performance of the decree should the appeal not succeed.

4. The applicant filed the application on 25.3.2021 while the decree was passed on 27.11.2019. The lower court judgment is not attached to the application. The ruling delivered on 21.10.2020 was in furtherance of execution proceedings. In the absence of any cogent material either on the body of the application or in the supporting affidavit, the court is unable to find any substantial loss to be occasioned to the applicant. Similarly, no proposal for any security for the due satisfaction of the decree should the appeal be unsuccessful has been made.

5. Coming to the request for extension of time to appeal, the applicant blames his former lawyers for lack of communication on time or at all. The applicant does not state when he last attended court before judgment was delivered and subsequently soon thereafter.

6. At paragraph 9 of the supporting affidavit, the applicant admits he became aware of the judgment when the ruling over contempt proceedings was made on 21.10.2020. It is not clear why the applicant did not move to court soon thereafter instead of waiting until 25.3.2021. The delay has not been explained at all.

7. As indicated above, the applicant has neither attached judgment to be appealed against nor the draft memorandum of appeal.

8. The above notwithstanding and given the right of appeal is a Constitutional right, I am inclined to grant the applicant access to justice since no prejudice would be occasioned to the respondent. **See *Raila Odinga –vs- IEBC & 4 Others [2013] eKLR and Nicholas Kiptoo Korir Arap Salat –vs- IEBC & 7 Others [2014] eKLR.***

9. The applicant shall file and serve the intended appeal within 14 days from the date hereof.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19TH DAY OF JANUARY, 2022

In presence of:

No appearance for parties

Court Assistant – Kananu

HON. C.K. NZILI

ELC JUDGE