



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MARAGA, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. NAI 59 OF 2015

BETWEEN

KANYONGO AREPEL RIAMASIA APPLICANT

AND

APALINE AREPEL RESPONDENT

(An Application for extension of time within which to file and serve a Notice of Appeal as well as the Record of Appeal out of time, arising from a Ruling of the High Court of Kenya, Environment & Land Court at Kitale,

(Obaga, J.) dated 27th January, 2015

in

E & L NO. 98 OF 2013)

R U L I N G

1. On 27th January 2015, Obaga, J. dismissed Kanyongo Arepel Riamasia, the applicant’s application that had sought to reinstate his suit which had been dismissed for want of prosecution. Having not appealed within the period of 14 days as required by Rule 75(2) of the Court of Appeal Rules, by his Notice of Motion dated 27th February 2015 and brought under **Rule 4** of the Court of Appeal Rules, the applicant has come to this Court seeking an extension of time to file the requisite notice and record of appeal out of time.
2. The application, as Ms Arunga, learned counsel for the applicant, submitted is premised on the ground that the delay was caused by a change of advocates. The applicant was not happy with the way his previous advocate handled the matter hence the change.
3. The respondent opposes the application. Relying on the replying affidavit, her counsel, Mr. Kiarie, submitted that though the delay this time round is not inordinate, if the court takes into consideration the way the applicant has in the past handled the litigation in this matter, it should dismiss this application. Counsel referred me to the history of the dispute in this matter as related by Obaga, J. in the ruling the applicant wants to appeal against. He concluded that even though no

draft memorandum of appeal has been exhibited in this application, the applicant's intended appeal is not arguable and urged me to dismiss this application with costs.

4. It is trite law that in an application like this for enlargement of time under Rule 4 of the Court of Appeal Rules, the applicant is supposed to satisfactorily explain the delay or failure to file the notice or record of appeal in time and also demonstrate that he has an arguable appeal.
5. It is also trite law that the grant of such an application is at the discretion of the court which discretion should nonetheless be exercised judiciously. To put the matter into perspective for the due exercise of my discretion, I think it is imperative to give the historical background of the matter.
6. The applicant and the respondent are siblings. They have, since the 1980s, had a dispute over the ownership of the piece of land known as **Title No. West Pokot/Siyoi/125** (the suit land). It started with the respondent filing a claim before the Land Disputes Tribunal in or around 1985. The Tribunal awarded the suit land to the respondent. That award was, in Kitale Senior Resident Magistrate's Court Land Case No. 22 of 1985, adopted as a judgment of the court.
7. The applicant applied for extension of time to object to the award but the Senior Resident Magistrate's Court dismissed that application. The applicant's appeal, Eldoret HCC Civil Appeal No. 60 of 1986, against that dismissal was summarily rejected by the High Court. He decided to prefer an appeal to this Court against that High Court decision but he did not do it in time. His application to this Court, Civil Application No. 162 of 1988, for extension of time was dismissed on 29/9/1988 for non-attendance.
8. Having reached the end of the road on that procedure, the applicant decided to try another way. On 13th May 1991, he filed another suit in which he sought the nullification of the Tribunal award as well as the adoption of the same as judgment of the court in SRMCC No. 22 of 1985. In that fresh suit the applicant also sought a declaration that he was the sole proprietor of the suit land and orders of eviction against the respondent.
9. When that suit came up for hearing on 10/3/1994, the applicant did not attend court. Consequently, it was dismissed for non-attendance. On 5/1/1995, he filed an application to reinstate that suit but it was also dismissed on 7/3/1995 for non-attendance. An application to reinstate the dismissed application was filed on 20/11/1995 and granted. That application was granted on 18/11/1996 and the suit itself was reinstated and fixed for hearing on 14/3/1997. After adjournment that day as the suit could not be reached due to pressure of work, the applicant thereafter never took any step to prosecute the suit. On 2/10/2000, the suit was once again dismissed for want of prosecution.
10. On 23/3/2001, the applicant filed an application and once again sought to reinstate his dismissed suit. He contended before the High Court that between 1997 and 2001 his advocates were trying to have the suit transferred from Nakuru to Kitale High Court for hearing and disposal and that his advocates learnt on 21/2/2001 that the case had on 2/10/2000 been dismissed for want of prosecution. Obaga, J. was not persuaded by that argument. He therefore dismissed the applicant's said application on 27th January 2015. The applicant once failed to file the notice of appeal in time hence this application for extension of time to file both the notice and record of appeal out of time.
11. This historical background tells one consistent story: that the applicant has been indolent in the prosecution of his claim in this matter.
12. The historical background also adds one more thing: that the applicant has no arguable appeal. As stated, the Land Disputes Tribunal awarded the suit land to the respondent way back in 1985. Due to his indolence, the applicant failed in his attempts to upset that award through the appeal process set out in the now repealed Land Disputes Tribunal Act, 1981. In my respective view, the fresh

litigation commenced to overturn the Tribunal award and its adoption in Kitale SRMCC No. 22 of 1985, even if it is finally reinstated, which in effect is what this application ultimately aims at, will not take the applicant anywhere. That suit is not an appeal against the order of Kitale Senior Resident Magistrate's Court in Land Case No. 22 of 1985 that adopted the Tribunal award as a decree of the court. So the matter is res judicata.

13. Public policy demands that litigation must end. Keeping this matter in court any further is not good even to the parties and more importantly to the public.

14. For these reasons, I find no merit in this application and I accordingly dismiss it with costs

DATED and delivered at Eldoret this 8th day of December, 2015.

D.K. MARAGA

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JUDGE OF APPEAL

I certify that this is a true copy
of the original.

DEPUTY REGISTRAR