



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC. CIVIL APPLICATION NO. 148 OF 2011

1. MULI MUSEMBI

2. MRS. PAULINA.....APPLICANTS/APPELLANTS

VERSUS

RUTH KATUNGA ISIKARESPONDENT

R U L I N G

1. The application dated 8/6/2011 seeks orders that this Honourable Court be pleased to grant leave to the Appellants to appeal out of time.

2. According to the affidavit in support and a further affidavit sworn by the Applicants, the delay in filing the appeal is blamed on the lower court’s delay in providing the Applicants with the certified copy of the of the typed proceedings and judgment and failure by his then advocates to act diligently and/or give the correct advice.

3. The Respondent in her replying affidavit has opposed the application on the grounds that the delay has not been explained. It is further argued that the decree has been partly satisfied as the costs of the suit were deposited in court and later released to the Respondent’s counsel. That following the hearing of the Notice to Show Cause, the court made orders that the Applicants be evicted from the suit property which orders remain unchallenged and therefore litigation has come to an end.

4. Under **Order 50 rule 6**, the powers of the court to enlarge time are wide and unfettered. This discretion is however to be exercised judicially. (See, for example, **Pothi Walla –vs- Kidogo Basi Housing Co-op Society Ltd & 31 Others 2003 KLR 74.**)

5. The subject matter of the suit herein is land which is an emotive issue. The delay herein is not inordinate and has been explained. The appeal is arguable. My view is that no prejudice will be suffered by the Respondent which cannot be compensated by costs. The demands of justice dictate that the application be allowed to allow the appeal to be heard on merits. Consequently, I allow the application with costs to the Respondent. The appeal to be filed within 30 days from date hereof.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 29th day of September 2014.

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B. THURANIRA JADEN

JUDGE