



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO.18 OF 2014

AGGEY AJWANG' JUMA.....APPELLANT

VERSUS

KENYA RAILWAYS CO-OPERATION.....RESPONDENT

RULING

1. The Notice of Motion is dated the 3rd February, 2014 and is brought under the provisions of **Order 50 rule 6** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act** and all other enabling provisions of the law.

APPLICANT'S SUBMISSIONS:

2. The Applicant seeks the following orders *inter alia*:
 - i. **That pending the hearing of this appeal, this honourable court be pleased to issue order against the Respondent/Defendant restraining and/or staying any form of execution against the Appellant.**
 - ii. **That this honourable court be pleased to grant leave to the Appellant to file an appeal out of statutory time limits.**
 - iii. **That costs be awarded to the Appellant.**
3. The Applicant relies on the grounds in the face of the application and the Supporting Affidavit AGGREY AJWANG JUMA made on the 3rd February, 2014
4. Judgment was delivered on the 27th June, 2013 and being aggrieved with the decision, the Appellant is desirous of filing an appeal which it is contended is arguable.
5. The Applicant has been ill for a long time and jobless. He had also relocated to the village and was unable to instruct his counsel to file the appeal.
6. The doctor's letter in support of his illness is annexed to the application and is marked "AAJ 2."
7. The Applicant prayed that his application be allowed.

RESPONDENT'S SUBMISSIONS

8. The application was opposed and reliance was placed on the Replying Affidavit dated the 9th June, 2014.
9. Counsel submitted that judgment was entered on the 12th June, 2013 and the Applicant started attending the clinic three months after the judgment.
10. The doctor attending the Applicant is based in Nakuru and during that period of three months.

- There was sufficient time for Applicant to have instructed his advocates.
11. Reference was made to **Order 42** which governs appeals and counsel submitted that the Applicant had annexed the Draft Memorandum of Appeal but had failed to annex the typed proceedings.
 12. That in the absence of the typed proceedings, the question that arises, what was the genesis of the grounds of appeal.
 13. Counsel urged the court to dismiss the application as there was no evidence to show that the Applicant was incapacitated from the period 12th June, 2013 to 9th September, 2013. That the Applicant ought to have filed his appeal in good time.

ISSUES FOR DETERMINATION:

14. After hearing, the submissions of both Counsel, the court finds only one issues for determination:
 - i. whether the Applicant has demonstrated a good and sufficient cause for not filing the appeal in time.

ANALYSIS:

15. The period for filing an appeal is thirty days from the date of delivery of judgment.
16. The judgment herein was delivered on 27th June, 2013 and therefore an appeal ought to have been filed on or before the 27th July, 2013.
17. The proviso to **Section 79G** of the **Civil Procedure Act** allows an Applicant to have an appeal admitted out of time provided that the court is satisfied that he has a good and sufficient reason for not filing the appeal in time.
18. The Applicant deponed that he was taken ill for a long time and relocated to the village and was also jobless and therefore unable to instruct his advocates.
19. This court has had occasion to peruse the Doctor's Report annexed to the application and notes that the Doctor states that the Applicant had been attending his clinic from 9th September, 2013 and was bed ridden from that time.
20. The above notwithstanding, this court notes that judgment was delivered on the 27th June, 2013.
21. There is a window period of three months from 27th June, 2013 to 9th September, 2013. It is incumbent upon the Applicant to demonstrate to this court that during this period, he was truly indisposed and unable to instruct his advocate to file the intended appeal.
22. This court also notes that the Applicant did not annex to his application any copy of a letter requesting for a copy of decree or typed proceedings, to demonstrate that he truly had taken steps to start the process to initiate the intended appeal.

FINDINGS AND DETERMINATION:

23. For the reasons stated above, this court finds that the Applicant has not demonstrated to the satisfaction of this court, that he had good and sufficient cause for not filing the appeal within the prescribed timelines.
24. The application is found to be lacking in merit and it is hereby dismissed.
25. No order as to costs.

It is so ordered.

Dated, Signed and Delivered at Nakuru this 22nd day of September, 2014.

A. MSHILA

JUDGE