

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. APPLICATION 96 OF 2012

KENNEDY MUTUGI.....APPLICANT

VERSUS

MIGWI GATOGONI.....RESPONDENT

RULING

This is a ruling in the application dated 30th May, 2013 seeking for orders that the applicant be granted leave to file appeal out of time. It is supported by the affidavit of John Gacheni the Counsel for the applicant. He depones that judgment was delivered by Baricho Resident Magistrate on 18th February, 2012 and that three days later, he applied for certified copies of proceedings which were not supplied until 16th May, 2012 when the time for appeal had expired. The court issued a certificate of delay in supply of the proceedings dated 17th May, 2012.

The applicant contends that the appeal has good chances of success.

The respondent opposes the application through his replying affidavit. He cites prolonged delay of three months as opposed to the 30 days provided for by law for any party aggrieved by a judgment to appeal. It is also argued that the applicant did not require certified copies of proceeding in order to appeal.

The suit before Baricho court was for eviction and the orders were given in favour of the respondent. Ownership was not in dispute because it had been resolved by Kirinyaga County Council. The respondent contends that the intended appeal has no chances of success. The respondent filed submissions which consists of similar issues and facts in the supporting affidavit.

I have perused the proceedings and judgment of the Principal Magistrate Baricho. The respondent herein sued the applicant claiming order of eviction from Plot No. 120 Kadongu. The issue of ownership was established prior to filing of the suit by Kirinyaga County Council whose officials including the surveyor testified in court. The court granted the orders of eviction to the respondent against the defendant. The judgment was based on the evidence of both parties.

Without appearing like I am deciding the appeal, the applicant has failed to convince me that his appeal has high chances of success which is a requirement for granting leave to file an appeal out of time, it is considered opinion that granting leave in an appeal that has slim chances of success would be a waste of precious judicial time.

I also agree with the respondent that the applicant did not need certified copies of proceedings to file the appeal. The appeal record which comes at a later stage is the one that must have certified copies of proceedings.

I find no merit in this application and I dismiss it accordingly with costs to the respondent.

DELIVERED, DATED AND SIGNED AT EMBU THIS 9TH DAY OF DECEMBER, 2014.

F. MUCHEMI

JUDGE

In the presence of:-

Ma. Ameyo for Gacheru for Applicant

Mr. Rurigi for Respondents

F. MUCHEMI

JUDGE