



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
MISCELLANEOUS APPLICATION 129 OF 2011
ELIJAH KIPSOIMO MARITIM.....APPLICANT
VERSUS
STEPHEN CHUMO.....RESPONDENT

RULING:

The application is a Notice of Motion dated the 7th October, 2011 under section 79 of the Civil Procedure Act.

The Applicant seeks enlargement of time to file an intended appeal from the judgment delivered on the 1st December, 2010 in Eldoret CMCC No. 7 of 2007.

The application is supported by an affidavit of ELIJAH MARITIM made on the 7th October 2011 and filed on the 13th October 2011 and the Applicant also relies on the grounds on the face of the application.

The reasons adduced for the delay in filing of the appeal, timeously, was that the Applicant was incapacitated, having been involved in a Road Traffic Accident along the Kapsabet/Chavakali Road in the year 2003.

The Applicant annexed a medical report in support of the injuries sustained and submitted that the delay was occasioned due to his medical condition.

Counsel for the Applicant submitted that the intended appeal had high chances of succeeding and a draft of the same was annexed to the application and marked “EKM2”.

Counsel urged the court to allow the application which had been brought promptly and made in good faith and a satisfactory explanation had been given for the delay.

The application was opposed by Counsel for the Respondent and Counsel relied on the Respondent’s Replying Affidavit dated the 19th November, 2011.

Counsel submitted that there had been an inordinate delay as judgment was delivered on the 1st

December 2010 and the current application before the court was filed on the 7th October, 2011 which was close to one year from the date of judgment. That the Applicant was guilty of “LACHES” and that one year could not be considered as reasonable time.

Counsel further submitted that the Road Traffic Accident dates back to the year 2003 and that no Treatment Notes, no P3 Form is annexed, nor was an Accident Abstract Report annexed to the application. That the Medical Report annexed in support was undated and the author of the medical report had no designation. That the validity and the authenticity of the letter was questionable and could not be used to persuade the court on the medical grounds that were advanced.

Counsel further argued that the accident was in the year 2003 and the suit that the Applicant had filed was in the year 2009. Six years down the line the Applicant had been able to prosecute the initial suit yet thereafter (2011) due to his medical condition he is unable to file the appeal and that there was no correlation between these two sets of facts.

Counsel urged the court to dismiss the application as the Intended Appeal had no chances of succeeding. That the application was made in bad faith and made so as to avoid payment of costs.

After hearing both Counsels for the Applicant and the Respondent, this court finds that there are two (2) issues for determination;

(a) Inordinate delay.

(b) Satisfactory explanation.

On the first issue relating to inordinate delay. The judgment was delivered on the 1st December 2010 and the current application for enlargement of time was filed on the 7th October, 2011 which is close to a year. There are numerous authorities that have held that a delay of four(4) months amounts to an inordinate delay.

The court concurs with submissions of Counsel for the Respondent and finds that the delay in bringing the current application is indeed inordinate.

Which then brings me to the second issue the provisions to Section 79(G) reads as follows;

“.....provided that an appeal may be admitted out of time if the Appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.....”

The Applicant alludes to an accident that occurred in 2003, in which he sustained injuries. The Medical Report annexed in support of the Applicant’s injuries is undated and the author has no designation.

The accident occurred in the year 2003 yet in the year 2009 the Applicant managed to file and prosecute the initial suit giving rise to the intended appeal, which amounts to six years down the line. Yet two (2) years thereafter (that is in 2011) the Applicant claims that his medical condition stopped him from initiating and filing the appeal.

The court finds that the Applicant has not adduced good and sufficient grounds for not filing the appeal in time and also finds the explanation relating to the delay unsatisfactory.

The court finds that the application has no merits and it is hereby dismissed with costs to the Respondent.

Dated and Delivered at Eldoret this 25th day of June 2012.

MSHILA

JUDGE

Coram: Before Hon. Mshila J

CC: Andrew

Counsel for the Applicant.....

Counsel for the Respondent.....

A.MSHILA

JUDGE