



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 1075 OF 2016

JANE MUCHIKU KIMEMIA.....PLAINTIFF

=VERSUS=

JOHN MWENJA NGUMBA.....DEFENDANTS

RULING

1. This is a ruling in respect of a notice of motion dated 7th September 2020 in which the Applicant seeks extension of time within which to file Notice of Appeal. The Applicant contends that she came to learn of the delivery of Judgement on 31st August 2020 when her erstwhile lawyers texted her informing her that Judgement had been delivered on 14th May 2020 .

2. The Applicant contends that the Court did not send any notification of delivery of Judgement. As she intends to prefer an appeal against the Judgement, she prays that the time for filing Notice of Appeal be extended.

3. The Applicant's application is opposed by the Respondent through replying affidavit sworn on 16th November 2020. The Respondent contends that this application is frivolous and that it is only meant to frustrate the implementation of the Judgement. The Respondent argues that the Applicant has not provided any proof of the text which was allegedly sent to her on 31st August 2020. The Respondent further argues that the judgement was delivered after parties were notified of the date for delivery.

4. I have considered the Applicant's application as well as the opposition thereto by the Respondent. I have also considered the oral submissions during the hearing of the application. The only issue for determination is whether the Applicant should be granted extension of time to file Notice of Appeal. In applications like this, the Court is obliged to consider the length of delay, the reason for delay and the prejudice which the Respondent will suffer if extension is granted.

5. In the instant case, Judgement was delivered on 14th May 2020. The Judgement was delivered after the court issued notices to the Advocates concerned. The list of judgements to be delivered on 14th May 2021 had been published in the Law Society of Kenya website, and the Law Reform Commission Website. Advocates had been asked to provide their e-mail address and court link for the day's list of judgements and rulings had been circulated.

6. Whereas the Applicant claims that she was texted by her former lawyers on 31st August 2020, she did not annex the alleged text. It is not even disclosed when her erstwhile Advocates came to learn of the delivery of Judgement. Without any proof as to when the Applicant came to learn of the judgement, I find that no explanation has been given for the delay. This application was filed more than five months from the delivery of judgement. The court in its judgement clearly indicated that judgement had been delivered in the absence of the parties who had been informed of the date and time of delivery of judgement.

7. The Applicant has accepted part of the monies which the court decreed should be payable to her. If the court were to allow the extension as requested, this will cause prejudice to the Respondent. I therefore find no merit in this application which is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 25TH DAY OF FEBRUARY 2021.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Simiyu for Applicant

Mr Onyancha for Respondent

Court Assistant: John

E.O.OBAGA

JUDGE