



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC MISC APPLICATION NO. 2 OF 2020**

**FRANCIS KANAKE NGUTHARI.....APPELLANT**

**VERSUS**

**KARONORIU BAIMOKI.....1<sup>ST</sup> RESPONDENT**

**DLASO TIGANIA WEST/EAST DISTRICT.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This miscellaneous suit was filed vide a notice of motion dated 12.2.2020. The applicant is seeking leave to appeal out of time as well as a stay of execution in respect of the ruling delivered on 21.11.2019 in Tigania PM ELC No. 52 of 2018.

2. The applicant who was the plaintiff before the trial court contends that he applied for typed proceedings on 21.11.2019 but the same were not supplied until 10.2.2020. He contends that the respondent is threatening to evict him and this will render him a destitute.

3. The 1<sup>st</sup> respondent opposed the application via the replying affidavit dated 12.3.2020. He contends that the applicant has not clearly demonstrated why he delayed in filing an appeal, he has not availed the letter requesting for proceedings and no certificate of delay has been availed.

4. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents have also opposed the application via their grounds of opposition dated 2.12.2020. They aver that applicant has not stated what is to be stayed, that the applicant has not explained the delay and he has not demonstrated the substantial loss that he stands to suffer.

5. On 15.10.2020, the court directed parties to file submissions in respect of the application of which the applicant was to file and serve his submissions by 11.11.2020. He did not comply. I have however seen submissions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents which I have duly considered.

6. The issues arising for determination are (1) **whether to grant leave to the applicant to file appeal out of time and (2) whether to grant a stay of the ruling of 21.11.2019.**

7. On the issue of extension of time, I make reference to the case of **Nicholas Kiptoo Korir Arap Salat vs Independent Electoral and Boundaries Commission & 7 others (2014) eKLR**, where the Supreme Court of Kenya held that:

***“Extension of time being a creature of equity, one can only enjoy it if he acts equitably; he who seeks equity must do equity. Hence one has to lay a basis that he was not at fault so as to let time lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek court to grant it”.***

8. In the instant suit, the applicant contends that he was not given the proceedings in time to lodge an appeal. However, he has not demonstrated to the satisfaction of this court that he requested for the said proceedings. Nor has he availed a certificate of delay to that effect.

9. Further, all one needs in lodging an appeal is to file a memorandum of appeal – ***see AIG Insurance Company Limited vs Michael Okoth (2018) eKLR.***

10. I find that the applicant has not given a plausible explanation as to why he did not lodge the appeal within the stipulated time of 30 days.
11. On the issue of stay, I find that plaintiff's suit was dismissed before the trial court. What is there to stay? Nothing. The dismissal of the suit was a negative order, hence there was no decree to be executed emanating from the trial court. ***See Lucia Abaja Otiemo & 2 others vs Filgana Omago Okoth (2018) eKLR.***
12. All in all, I find that the application lacks merits. This suit is hereby dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED AT MERU THIS 17<sup>TH</sup> DAY OF MARCH, 2021**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this Judgment was given to the advocates for the parties through a virtual session via Microsoft teams on 25.1.2021. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**