



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 25 OF 2020

BRADLEY HORIZONS LIMITED.....PLAINTIFF/APPLICANT

VS

SANLAM GENERAL INSURANCE LIMITED.....DEFENDANT/RESPONDENT

RULING

1. On the 28/1/2020 the Applicant moved the Court by way of a notice of motion seeking inter alia the following orders; leave to file Appeal out of time; interim injunctive orders against the Respondent pending the hearing and determination of the application/intended Appeal.
2. The application is premised on the grounds adduced thereto and the affidavit of John Kamau Githinji sworn on 6/1/2021 in which he deponed that the Applicant is aggrieved with the ruling delivered on the 3/12/2020. That the delay in filing the Appeal within the stipulated time was brought about by the changes in instructing another Advocate to handle the matter.
3. The Applicant averred that it stands to suffer irreparable damage which cannot be adequately be compensated by way of damages. It posits that it has an arguable Appeal which will be rendered nugatory should leave not be granted.
4. The application is opposed by the Respondent vide a replying affidavit sworn by Ms Gladys Muema Learned In-house Counsel, who deponed that the prayer for interim injunction stands determined as per the ruling of the 3/12/2020. That the Applicant has not shown any evidence to support the delay in instructing a new Counsel. Further that the suit land has already been sold to a third party and the transaction has been concluded with the completion documents handed over to the purchaser on full receipt of the purchase price by the vendor/Respondent. That the Respondent has no registrable interest following the conclusion of the sale. That the Applicant does not have any arguable case as the agreement of sale had been rescinded.
5. The application was argued in open Court on the 17/2/2021 when the learned Counsel for the parties reiterated the pleadings and the contents of the affidavits on record.
6. It is trite that a party has 14 days to lodge an Appeal after the delivery of the decision. The ruling the subject of the intended Appeal was delivered on the 3/12/2020. The ruling was delivered in the presence of the Advocate for the Applicant. The Applicant therefore had upto the 18th December to file its Appeal.
7. The Supreme Court set out certain guiding principles, on the question of extension of time in the **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR**;

“This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a Court should consider in exercise of such discretion:

- a. **extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;**
- b. **a party who seeks...extension of time has the burden of laying a basis to the satisfaction of the Court;**
- c. **whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;**
- d. **[where] there is a reasonable [cause] for the delay, the delay should be explained to the satisfaction of the Court;**
- e. **whether there will be any prejudice suffered by the Respondents if the extension is granted;**

f. whether the application has been brought without undue delay; and,

g. whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

8. Extension of time being an equitable remedy is given at the discretion of the Court which discretion must be exercised judiciously.

9. The delay of 18 days in my view has not been explained to the satisfaction of the Court. Save that the Applicant was changing its legal representation it has not advanced any cogent reasons for not filing the Appeal on time. There is no evidence that the erstwhile Advocate was given instructions to file an Appeal and failed to do so within time. It is the finding of the Court that the delay has not been explained.

10. As to the prejudice that the Respondent will suffer, the Respondent has explained that the suit land has been sold to a third party which sale has been concluded and completion documents handed over to the third party upon full payment of the purchase price. That it has no registrable interest in the suit lands. I have seen the Land Control Board consent to transfer dated the 8/12/2020 together with the letter confirming completion of the transaction and payment remittances. It is the finding of the Court that there is now a third party who is not a party to the suit and who is likely to be prejudiced if the orders are granted. Further the Applicant has not explained the prejudice that it stands to suffer if the application is not granted.

11. With respect to the prayer on interim injunction, the Court is of the considered view that the prayers are resjudicata having been considered and determined vide the ruling of the 3/12/2020.

12. In the end the application is unmerited. It is dismissed with costs to the Respondent.

13. It is so ordered.

DATED, SIGNED & DELIVERED ONLINE THIS 11TH DAY OF MARCH 2021.

J.G. KEMEI

JUDGE

Delivered online in the presence of:

Ms Anani HB for Wilfred Mutubwa for the Plaintiff/Applicant

Mureithi for the Defendant/Respondent

Court Assistant, Njeri