

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC MISC. APPLICATION NO. 59 OF 2020

WILLIAM NJAU KAMAU.....APPLICANT

VERSUS

KIMURI HOUSING CO. LTD.....1ST RESPONDENT

MARGARET W. NGUGI.....2ND RESPONDENT

RULING

The Applicant filed the application dated 1/7/2020 seeking leave to file a suit out of time. The Applicant averred that he instructed his advocates to file suit and that the advocates prepared the pleadings but before they could be filed, the government issued restrictions on movement in certain counties to prevent further spread of the Covid – 19 virus. The Applicant claimed that he was affected by the restrictions on movement since he was out Nairobi and the suit could not be filed within the stipulated period.

The application was supported by the affidavit of Michael Kamau Kinga, the advocate representing the Applicant. He deponed that his firm was instructed to file suit on behalf of the Plaintiff but before they could file the plaint the government imposed restrictions on movement into and out of the Nairobi Metropolitan area. He averred that by then he was in his rural home in Machakos Country and could not travel to Nairobi. He averred that since he was the only signatory to his firm’s bank account, there was no way the suit could be filed without payment of the court fees. He stated that after he obtained his Law Society of Kenya card he reported to the office on 22/6/2020 and thereafter filed this application.

Elizabeth Waweru swore the supplementary affidavit on 17/12/2020. She averred that they inadvertently omitted to attach the intended pleadings to the application dated 1/7/2020. She attached the draft plaint and list of documents.

The application does not disclose why the suit could not be filed before April 2020 when the Government imposed travel restrictions. Further, it is not clear when the Applicant instructed the advocate to file suit and when the advocates prepared the documents which they claim they could not file in court owing to the difficulty in accessing the bank account for purposes of paying the filing fees. The court is not persuaded that it should exercise its discretion in favour of the Applicant and declines to grant the orders sought in the application dated 1/7/2020.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF MAY 2021.

K. BOR

JUDGE

In the presence of: -

Ms. W. Wandungi holding brief for Ms. E. Waweru for the Applicant

Mr. V. Owuor- Court Assistant

No appearance for the Respondents