

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC. CASE NO.24 OF 2018

M'RINGINE M'IKWINGA M'CHUNUKU.....APPLICANT

VS

GERALD BUNDI M'THURANIRA.....1ST RESPONDENT

PETER MWENDA ABUINE.....2ND RESPONDENT

RULING

1. The application before me is dated 24.9.2018 and is brought under section 79 G of the Civil Procedure Act and order 51 of the Civil Procedure Rules.

2. The applicant who was the claimant in Meru CMCC no. 536/2008 where judgment was delivered has sought orders to file his appeal out of time and within such period that the court may deem fit. He avers that he was not aware of the delivery of the lower court's judgment until March 2018. The judgment was apparently given in 2015 where the suit was dismissed.

3. The respondent avers that applicant was aware of the judgment since he had even filed an application for stay of execution before the lower court.

4. I have perused the record and I find that from annexure GBI availed by the respondent in his replying affidavit, the applicant appears to have been aware of the judgment long before March 2018.

5. Section 79G of the civil procedure Act provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: 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”.

6. Applicant avers that the lower court judgment was given in 2015. He is not candid since he was aware of the judgment going by the application for stay which he made before the lower court.

7. I note that the lower court case had a life span of 7 years. Thereafter, 3- 4 years have gone by from 2015 when judgment was delivered to when the present application was filed in September 2018. This court cannot condone laxity. I find that no sufficient reasons have been advanced by the applicant to warrant the granting of the orders sought herein. The application dated 24.9.2018 is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 10TH DAY OF JULY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Gikonyo holding brief for Murango M. for applicant

Applicant

1st respondent

HON. LUCY. N. MBUGUA

ELC JUDGE