



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC MISCELLANEOUS APPLICATION CASE NO. 04 OF 2019**

**(Being an application to appeal out of time against the Ruling of the Learned Chief Magistrate Mr. J. M. Njoroge in his Ruling delivered on 24<sup>th</sup> April, 2019 and in respect of Chuka Chief Magistrate's Court L.D.T. Case NO. 1 of 2011)**

**MARGARET MUCHIRI.....APPLICANT**

**VERSUS**

**ELIPHAS NYAGA M'RIBU.....RESPONDENT**

**RULING**

1. This application is dated 12th June, 2019. It states that it has been brought to court Under Rules 4, 42 (1) and 43(1) (3) (a) (Court of Appeal Rules 2010) of Appellate Jurisdiction Act, Cap 9 Laws of Kenya as read with Section 65 (1) and 75 (1) of the Civil Procedure Act and Orders 43 Rules 1 (2), (3), 50 Rule 6 of the Civil Procedure Rules, Order 42 Rule 6 (1) of the Civil Procedure Rules, Article 159 2 (a), (b), (d) and (e) of the Kenya Constitution 2010, and all other enabling Provisions of the Law).
2. The application has the following grounds:
  - a) That after the applicant was greatly aggrieved by the Ruling delivered on 24th April, 2019 and in respect of Chuka CM L.D.D.T Case No. 1 of 2011, he duly instructed M/s Waklaw Advocates to apply for certified copies of the Ruling for the purpose(s) of lodging an appeal.
  - b) That M/s Waklaw Advocates applied for certified copies of the Ruling on 26th April, 2019, but the same were supplied on 4th June, 2019 and outside the statutory period allowed for lodging appeals.
  - c) That Chuka Chief Magistrate's Court in L.D.T. Case No. 1 of 2011 duly issued a certificate of delay on 11th June, 2019 in respect of the supply of the Ruling delivered on 24th April, 2019.
  - d) That failure to lodge the appeal in time by the applicant was not deliberate and was occasioned by factors beyond the applicant's control.
  - e) That it is in interest of justice that the applicant's application be allowed.
  - f) That the applicant undertakes to expeditiously file and prosecute the intended appeal, if leave sought is granted.
  - g) That the orders sought by the applicant would not prejudice the respondent in any event.
3. The application was heard interpartes on 9th July, 2019.
4. As the applicant has already deposited security as ordered by the court on 26th June, 2019, I do find it meritorious to allow prayer 3 in the application. The sum of Kshs.100,000/= deposited as security will be held by the court pending disposal of the intended appeal.
5. Prayer 4 is allowed and the applicant is directed to file and serve the apposite record of appeal within 30 days of today.
6. Costs shall be in the cause.

**Delivered in open Court at Chuka this 9<sup>th</sup> day of July, 2019.**

in the presence of:

CA: Ndegwa

Atheru h/b Kirimi for the Applicant

Kijaru for the Respondent

**JUDGE P.M.**

**NJOROGE**