



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC. CIVIL (JR) APPLICATION NO. 100 OF 2009

REPUBLIC.....APPLICANT

VERSUS

IGEMBE DISTRICT LAND ADJUDICAITON

AND SETTLEMENT OFFICER.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

AND

JOSEPH MWENDA MALEBE.....1ST INTERESTED PARTY

JOSEPH NTUMBURI.....2ND INTERESTED PARTY

STEPHEN MWITL.....3RD INTERESTED PARTY

JUSTUS MURERWA.....4TH INTERESTED PARTY

ISAIAH MIRITI.....EXPARTE APPLICANT

RULING

BACKGROUND

1. The application before me is the notice of motion dated 12th March 2018 brought under Section 7 of the Appellate Jurisdiction Act. The applicant is seeking leave to file and serve notice of appeal out of time. In his supporting affidavit sworn the same date the applicant who is also the interested party in this Judicial Review proceedings stated that the ruling on a preliminary objection dated 28/10/2016 was to be delivered on 6/11/2017 but the same was not delivered as the file had been transmitted to Garissa High Court for writing of the ruling by the Presiding Judge. Since the ruling was not delivered on the 6/11/2017, he was expecting to be notified on the next ruling date once the same was ready. On 9th March 2018 at around 11.30 am he received a call from his lawyer informing him that the ruling had been delivered way back on 8.2.2018 in their absence.

2. He stated that he has read the decision of the court delivered on 8/2/2018 and wishes to lodge an appeal but since the time for ruling and serving appeal has lapsed, he requires extension of time within which to file and serve the notice of appeal.

3. The 4th interested party has filed a replying affidavit sworn on 13th April 2018 in which he opposed the application stating that the parties were notified of the ruling date where he also attended with his advocate.

4. The advocate appearing for the exparte applicant filed submissions in which they argued that their client will suffer irreparable loss if the application is not allowed. The learned counsel further submitted that this Hon. Court has jurisdiction and discretion to grant the said order(s) sought. He cited section 7 of the appellate jurisdiction Act cap 9 law of Kenya and the following two cases:

(i) Edward Njane Nganga & another versus Damaris Wanjiku Kamau & another (2013) eKLR.

(ii) Kenya Airports Authority vs Timothy Nduvi Mutungi (2013) eKLR.

5. Neither the respondents nor the interested parties advocates filed written submissions.

DECISION

6. I have considered the submissions by the ex parte applicant and the 4th interested party. I have also considered the written submissions by counsel for the ex parte applicant. The applicant in this application is seeking an order for extension of time within which to file and serve a notice of appeal. Section 7 of the Appellate Jurisdiction Act states as follows:

“7 the high court may extend the time for giving notice of intention to appeal from the judgment of the high court or for making an application for leave to appeal or for a certificate that the case is fit for appeal notwithstanding that the time for giving such notice or making such appeal may have already expired”.

7. The power to extend or not to extend time to file and serve a notice of appeal is a discretionary power which is given to the court to be exercised to meet the ends of justice. The applicant has stated that he was not notified of the ruling delivered on 8.2.2018. It is trite law that a party which is aggrieved by the decision of a court and wishes to exercise his right of appeal must access the appellate court without much hindrance. The reasons given by the applicant that he was not notified of the ruling date have not been controverted or challenged. The explanation by the applicant that he was not notified of the ruling on 8.2.2018 is good enough for this court to exercise its discretion to meet the ends of justice. In the case of **Stanley Kahoro Mwangi & 2 others vs Kanyamwi Trading Company Ltd** (2015) eKLR. The trial judge faced with a similar application had this to say:

“The Principles guiding the court on an application for extension of time premised upon rule 4 of the rules are well settled and there are several authorities on it. The principles are to the effect that the powers of the court in deciding such an application are discretionary and unfettered. It is therefore upon an applicant under this rule to explain to the satisfaction of the court that he is entitled to the discretion being exercised in his favour”.

8. I am satisfied that the reasons given by the applicant for failing to file his notice of appeal within the stipulated period calls for this courts exercise of its discretion for extension of time to file the same. I find the application dated 12th March 2018 merited and the same is hereby allowed on the following terms:

(i) The applicant be and is hereby granted leave to file and serve notice of appeal within 21 days from today.

(ii) The costs of this application to be costs in the cause.

Read, delivered and signed in the open court this 2nd day of July 2018.

MR. E. C. CHERONO

ELC JUDGE

In the presence of:

CC: Janet/Galgalo

Mr. Kariuki for applicant

Respondent/advocate absent

Interested party/advocate absent