



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT MOMBASA
MISCELLANEOUS APPLICATION NO. 35 OF 2020

DORA ADHIAMBO.....APPLICANT

VERSUS

LEONARD OLIECH..... 1ST RESPONDENT

HAMIS JUMA ABASS..... 2ND RESPONDENT

RULING

(Application to file an appeal out of time; application not opposed; application allowed)

1. Through a miscellaneous notice of motion dated 7 December 2020, the applicant is seeking the following orders :-

(i) Spent (certification of urgency)

(ii) Spent (orders pending inter partes hearing)

(iii) That this Honourable Court be pleased to enlarge time within which the appellant (sic) can file a Memorandum of Appeal to the judgment of Hon. G. Kimanga delivered in RMCC Case No. 2602 of 2011.

(iv) That upon prayer (iii) being granted, the draft Memorandum of Appeal be deemed as duly filed.

(v) That costs of this application be provided for.

2. The application is based on the grounds that the applicant is aggrieved by the judgment in Mombasa RMCC No. 2602 of 2011; that the judgment was delivered in her absence and that of her representatives; that the applicant only came to learn of the judgment when she was served with a letter from the respondent's advocates demanding payment of costs of the suit and threatening to evict her from the suit premises; that upon learning of the decree, the applicant instructed her advocates on record, M/s Obara & Obara Advocates to lodge an appeal; that the said firm never acted on those instructions; that this prompted the applicant to instruct another firm of advocates, M/s J.O Magolo & Company Advocates to lodge an appeal; that the said law firm prepared the necessary application but failed to file it in court; that the applicant has an arguable appeal; and that the delay in filing the appeal within time was occasioned by circumstances beyond the applicant's control. The application is supported by the affidavit of the applicant who has more or less repeated what I have noted above as the grounds upon which the application is based.

3. Despite being duly served, the respondents have not filed anything to oppose this application.

4. I have considered the application. Although it is not very clear to me when the judgment herein was delivered, for the same is not disclosed in the application, I am persuaded that the applicant was probably let down by her erstwhile advocates who failed to lodge the appeal within the stipulated time. I would not wish to stand in the way of the applicant who believes that she has an arguable appeal and I will therefore enlarge the time within which the applicant may file an appeal. I hereby direct the applicant to file and serve her Memorandum of Appeal within the next 14 days. If no Memorandum of Appeal is filed as noted above, the leave to file appeal out of time will lapse.

5. I make no orders as to costs.

6. Orders accordingly.

DATED AND DELIVERED THIS 9TH DAY OF JUNE 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA