

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT BUNGOMA.

CIVIL APPEAL NO. 59 OF 2020

[An Appeal against the Ruling of C.A.S. Mutai (SPM) Bungoma Delivered on the 28th day of May 2020]

OPPORTUNITY KENYA.....APPELLANT

VERSUS

MARGARET WANJALA T/A MAKO AUCTIONEERS.....RESPONDENT

RULING

This is an Application by the applicant/appellant Opportunity Kenya filed against the Respondent Margaret Wanjala [T/A Mako Auctioneers] dated 15.6.2020 the following orders;

i. Spent

ii. Spent

iii. Spent

iv. That the time limited for lodging this appeal from the decision of the taxing master CAS Mutai herein dated 28th May 2020 and filing of the Memorandum of Appeal by way of Chamber Summons be and is hereby extended from 3rd June 2020 and the appeal be and is hereby deemed as duly lodged within the prescribed time.

v. That the ruling of the Taxing C.A.S. Mutai delivered on the 28th May 2020 in the matter of taxation of Auctioneers bill of cost dated 29th April 2019 between Margaret Wanjala T/A Mako Auctioneers and Opportunity Kenya Limited be and is hereby set aside.

vi. That the costs of this Application be provided for.

The grounds of the application are as deponed in the Supporting Affidavit of Christopher Ochieng, Advocate in the conduct of this matter for the applicant who depones that the taxation proceedings before the Taxing Master Hon. Mutai on 27.3.2020 when certain objections were raised concerning a letter of instruction relied on. A ruling was reserved to be delivered on 27.3.2020 when the Country due to COVID 19. The court was not sitting on 28.5.2020 but the said ruling was delivered in his absence and notice. On 12.6.2020 he learnt from the Registry that the Ruling was delivered on 28.5.2020. In view of that the time for filing a reference had lapsed. He now prays that he be granted leave to file the Reference/appeal out of time.

Edwin Simiyu Wamalwa Counsel for the Respondent filed a Replying Affidavit. He depones that he received copy of the ruling and served the applicants Counsel via WhatsApp; that the time of filing appeal has not lapsed and that the ruling was delivered in only one file CMCC MISC APP 152/2019 and not all the files in dispute.

The main prayer in this application is for enlargement of time within which the applicant to file an appeal from the ruling of the Taxing Master delivered on 28.5.2020. The reasons as explained was due to the non attendance by applicants' Counsel due to lack of communication arising from the COVID 19 suspension of Court Sittings. This court takes Judicial Notice of the disruption to Court calendar caused by implementation of COVID 19 National Counsel Administration of Justice Guidelines. For these reasons, I allow the application and direct that the applicant to file the intended appeal within 28 days from the date of this ruling. Same order to apply to HCCA 60/2020, HCCA 61/2020, HCCA 62/2020, HCCA 63/2020, HCCA 64/2020, HCCA 65/2020, HCCA 66/2020, HCCA 67/2020, HCCA 68/2020, HCCA 69/2020, HCCA 70/2020, HCCA 71/2020, HCCA 72/2020, HCCA 73/2020, HCCA 74/2020, HCCA 75/2020, HCCA 76/2020 and HCCA 77/2020.

Dated and Delivered at Bungoma this 4th day of February, 2021

S.N. RIECHI

JUDGE