

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

HIGH COURT CIVIL MISCELLANEOUS APPL. NO. 96 OF 2019

JOSEPH MOTE NZUKI.....APPELLANT

VERSUS

CATHERINE WAMUTWA VELETI.....1ST RESPONDENT

FRANCISCAH MWENDE MUTHUI.....2ND RESPONDENT

(Being an appeal from the Judgement of Hon. J. Munguti- Principal Magistrate's Court made on the 26th July, 2019 in Kitui Chief's Magistrate's Court Succession Cause Number 100 of 2008)

R U L I N G

1. **JOSEPH MOTI NZUKI**, the Applicant herein, has through a Notice of Motion dated **8th November, 2019** sought leave from this court to appeal out of time against the Judgement of the Lower Court delivered on **26th June, 2019** in Kitui Chief Magistrates **Court Succession Cause No. 100 of 2008**.

2. The main ground in this application is that the Applicant delayed in filing the Appeal due to lack of money. He says after the delivery of the judgement his former advocate called him to his office and notified him of the judgement and requested for money to enable him appeal, a request which he says he could not fulfill because of lack of funds. He says that when he failed to get the money he sought to act in person and when he attempted to file his appeal, he was told that time had lapsed. It is on that basis, that he has moved this court for leave to appeal out of time.

3. The Respondents have opposed this appeal and have pointed out that though the Appellant has exhibited a draft Memorandum of Appeal, he has not demonstrated that he has applied for proceedings and judgement to enable him pursue his appeal.

4. They have also faulted the Applicant for inordinate delay insisting that there is no explanation given to explain the delay from **July 2019 to November, 2019** when this application was filed.

They have accused him for deliberately delaying this matter to prejudice the 1st Respondents occupation of her portion of the land.

5. This court has considered this application and the response made. Extension of time to do any act or take a step in civil proceedings in court is a discretionary matter.

The provisions of **Order 50 Rule 6 of the Civil Procedure Rules** gives courts power to enlarge time upon such terms that meets the ends of justice. Courts are, more likely than not inclined to grant parties opportunities to ventilate their cases with a view to facilitating access to justice unless it can be demonstrated that the party invoking the discretion of the court is undeserving of the same due to inordinate and deliberate delay or obstruction of justice.

I have noted that the Applicant has explained that the reason why he delayed for three months, was because he was looking for money to instruct his Advocate. The fact that he eventually brought this application in person, in my view shows that the reasons given are well grounded. A party should not be condemned because of poverty or lack of money.

In the premises this court finds that the ends of justice tilts in favour of the Applicant. The Application dated **8th November, 2019** is allowed. The Applicant is granted **21 days** from today to file and serve his appeal. He is also directed to pursue the typing of proceedings to facilitate filing of the record of appeal and timely disposal of the appeal. I shall make no order as to costs in this application but costs shall be in the main appeal.

DATED, SIGNED AND DELIVERED AT KITUI THIS 10TH DAY OF MARCH, 2021.

HON. JUSTICE R. K. LIMO

JUDGE