



REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

Coram R. Wendoh

MIS CIVIL APPLICTAION NO. 22 OF 2019

JOSHUA ODIPO ONDONG.....APPLICANT

Versus

SOUTH NYANZA SUGAR CO LTD.....RESPONDENT

RULING

The applicant **Joshua Odipo Ondong** filed the Notice of Motion dated 6/8/2020 seeking orders that the court be pleased to extend time for compliance with the court's orders and ruling dated 15/10/2019 and costs of the application.

The application is supported by the affidavit of the **Kerario Marwa Advocate**, counsel for the applicant. He deponed that he was not aware of the ruling of the court dated 15/10/2019, the reason being that the court set the ruling date for the application dated 20/3/2019 on 3/10/2019. However, the court did not sit on the said date i.e 3/10/2019 and the court clerk advised counsel that the ruling would be on notice. His office was never served with the notice and on 14/7/2020, he followed up the file and found that the ruling was delivered on 15/10/2019; that though he paid for the proceedings on 16/7/2020, the same have not been availed to him and the advocate cannot be blamed for the delay in failing to comply with the orders of 15/10/2019; and that it is in the interest of justice that the time for complying with the court's orders of 15/10/2019 be extended.

The application was opposed and the Respondent's Advocates filed grounds of opposition to the effect that if the orders are granted, they will be premature, disproportionate, unjust, superfluous and there is no need for them; that the application is unnecessary and will prolong litigation.

Mr. Odero added that even if the application is granted, the parties are likely to come back before this court seeking extension of time again; that the applicant has not exhausted his options and that the applicant only needs to wait for proceedings and present the application with a certificate of delay.

In reply, **Mr. Mwita** urged that a court order is necessary to prompt the Deputy Registrar to facilitate the preparation of the court proceedings.

I have seen the ruling of **Mrima J** dated 15/10/2019. It indicates that both counsel for the parties were present i.e. **Mr. Kerario Marwa** for the applicant and **Mr. Marvin Odero** for the Respondent. **Mr. Kerario** has deponed that he was not present in court on the day the ruling was read and not aware of the said date. **Mr. Odero** who is said to have been present has not controverted **Mr. Kerario's** averments. It means that the quorum as recorded by the court on 15/10/2019 is incorrect.

In the court's ruling, the Deputy Registrar was ordered to avail the proceedings within fifteen (15) days and upon receipt, the applicant was allowed ten (10) days to file and serve a Memorandum of Appeal. **Mr. Kerario** deponed that it is not until 14/7/2020 that he followed up on the file. By that time, the period that had been granted to the applicant to file the appeal had long expired, over nine (9) months had lapsed. I wonder why counsel took so long to follow up on the matter even if the court had said that the ruling would be on notice. In that regard, the applicant did not act diligently. The above notwithstanding, having not been informed of the delivery of the ruling, the applicant cannot be faulted for failing to comply with the court's order of 15/10/2020. It is not known whether the court order had been served on the Deputy Registrar to prompt him to act within the fifteen (15) days. Had it been served, may be the Deputy Registrar would have called on the applicants' counsel to collect the said proceedings.

On the Respondents' contention that the application is unnecessary, it is my view that the Deputy Registrar can only be moved to act with alacrity to avail the proceedings if there is a court order in place. As things stand, the order of 15/10/2020 lapsed and there would be no need for the Deputy Registrar to avail the proceedings to the applicant. I find that the application is merited and I hereby

1. Grant an extension of time for compliance with the court's orders and ruling

of 15/10/2019.

2. The Deputy Registrar to avail the proceedings in Migori CMCC 795 OF 2005 within sixty (60) days hereof.

3. Upon receipt of the proceedings, the applicant to file and serve the Record of Appeal within ten days thereof.

Costs to be in the cause.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 15TH DAY OF APRIL, 2021

R. WENDOH

JUDGE

Ruling delivered in the presence of:-

Mr. Odero for the Respondent

Mr. Kerario Mwitwa for the Applicant – Absent

Ms Oloo Court Assistant