



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**P & A 28 OF 2015**

**1. ALBERT ALEXANDER AGGREY EKIRAPA**

**2. HUMPHREY ELISAI EKIRAPA.....PETITIONERS**

**VERSUS**

**JANE ASAMI OMBAYA.....OBJECTOR**

**R U L I N G**

[1] The application dated 22<sup>nd</sup> June 2021, by the objector/applicant is essentially for leave and/or enlargement or extension of time to file appeal against the ruling of this court made on 11<sup>th</sup> March 2021. On the periphery, the applicant seeks an order of stay of the orders made on 11<sup>th</sup> March 2021. This prayer is however misconceived as the resultant effect of the orders made by the court was dismissal of the applicant's application or summons for revocation of grant and subsequent confirmation of the grant dated 17<sup>th</sup> December 2015, in accordance with the law. This court does not think that it is possible to stay operation of the law and the remedy for any dissatisfaction in that regard is simply an appeal to a higher court.

[2] Nonetheless, the impugned ruling was delivered on the 11<sup>th</sup> March 2021 but no appeal or leave to appeal was sought by the applicant within the prescribed time. It was after a period of one month on 28<sup>th</sup> April 2021, that the applicant filed a notice of motion dated 27<sup>th</sup> April 2021 for extension of time to file an appeal. However, the application was withdrawn by the applicant on 17<sup>th</sup> June 2021, and on the 29<sup>th</sup> June 2021, filed the present application vide the chamber summons dated 22<sup>nd</sup> June 202. After the impugned ruling was made, the applicant requested for a certified copy of the ruling vide a letter filed on 16<sup>th</sup> March 2021, but this was not availed within time such that the fourteen (14) days period expired before the appeal could be lodged.

[3] The petitioners/respondents opposed the application on the basis of the grounds and/or averments contained in the replying affidavit deponed on 8<sup>th</sup> July 2021 by their legal counsel.

**Rule 67** of the Probate and Administration Rules provides for enlargement of time to the extent that when any period is fixed or granted by the rules or by an order of the court for the doing of any act or thing, the court upon request or on its own motion may from time to time enlarge each such period notwithstanding that the period originally fixed or granted may have expired.

[4] The conditions to be satisfied for grant of an order **extending** time to appeal were clearly stated in the case of **Leo Sila Mutiso vs Rose Hellen Wangare Mwangi NBI Civil Application No.251 of 1997**, as follows:-

“.....first, the length of delay, secondly, the reason for the delay, thirdly (**possibly**) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted”.

Herein, there was a delay of over one (1) month by the applicant and the explanation given for the delay in this application is not satisfactory in the absence of a certificate of delay from the court in supplying for a certified copy of the ruling and/or proceedings in respect thereof.

Besides, the letter dated 11<sup>th</sup> March 2021 and filed herein on 16<sup>th</sup> March 2021 addressed to the deputy registrar of this court was a normal letter merely requesting for certified copy of the ruling. It was not specific that the copy was required for purposes of an appeal.

[5] This application is therefore an afterthought intended to delay the just and expeditious disposal of this matter. Any unexplained delay or an unsatisfactory explanation for delay does invariably militate against the overriding objectives of any civil process and the principles of extension of time.

Further in this application, the applicant failed to demonstrate that the intended appeal is arguable with chances of success and that it is not frivolous.

For all the foregoing reasons, the present application is devoid of merit and is hereby dismissed with each party bearing their own costs.

Orders accordingly.

**J.R. KARANJAH**

**J U D G E**

[READ AND SIGNED THIS 14TH DAY OF JULY 2021]