



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 616 OF 2017

ROSE MUTHONI SARAGO.....JUDGEMENT DEBTOR/APPLICANT

-VERSUS-

COUNTY SECRETARY

KAJIADO COUNTY GOVERNMENT....DECREE –HOLDER/1ST RESPONDENT

EUNICE NJAMBI WANGORA.....DECREE-HOLDER/2ND RESPONDENT

RULING

This ruling is on the Chamber Summons dated 20th August, 2020 which has the following as the main prayer;

1. That upon hearing and determination of this application, this Court be and hereby pleased to vary the terms of consent order recorded in Court on 18th September, 2019 and extend the time within which the Plaintiff/ Applicant is to comply and lodge an Appeal before the Court of Appeal against the Judgment delivered on 25th March, 2019 by a further 14 days and or any other period that the Court may deem fit and justifiable.

The application which is brought under **Order 50 Rule 1 Civil Procedure Rules, Sections 1A, 1B and 3A** of the **Civil Procedure Act** and all enabling provisions of law is supported by an affidavit sworn by the Applicant in which she blames her former Counsel for not consulting her before entering into the consent. She also complains of her inability to raise the taxed costs owing to illness and other causes.

The application is opposed by the second Respondent who has filed grounds of opposition dated 15th September, 2020.

In the grounds, the second Respondent says that the Applicant’s Counsel had authority to represent the Applicant in everything pertaining to the suit.

Other grounds are that the conditional stay of 45 days having lapsed, there was nothing else left to extend, that the Court lacks jurisdiction to extend the time within which to lodge an appeal in the Court of Appeal among others.

Counsel for the parties filed written submission on 7th May, 2021 and 19th August, 2021.

I have carefully considered the application in its entirety including the affidavits, grounds, submissions and the case law in the submissions. I make the following findings;

Firstly, I find that this Court has no jurisdiction to extend time within which to file an Appeal at the Court of Appeal.

Section 19(2) of the **Environment & Land Court Act** provides;

“The Court shall be bound by the procedure laid down by the Civil Procedure Act”

Section 1(2) of the **Civil Procedure Act** provides;

“This Act applies to proceedings in the High Court and, subject to the Magistrate’s Courts Act, to proceedings in

Subordinate Courts”.

Secondly, it is trite law that a Consent Order cannot be set aside except on grounds of fraud, misrepresentation or other illegality. In this case, the Applicant has not proved any ground to warrant the variation of the Consent Order or record.

For the above reasons, I find no merit in the application dated 20th August, 2020 and I dismiss it with costs to the Respondent.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 7TH DAY OF DECEMBER, 2021.

M.N. GICHERU

JUDGE