



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL MISC. APP. NO. E113 OF 2021

BERO. R. OGORA (*Suing as administrator and personal*

representation of the estate of the

***late JOANINA NJERI BERO.....*APPLICANT**

VERSUS

MEDICAL PRACTITIONERS AND

DENTISTS COUNCIL.....1ST RESPONDENT

DR. F. K. MWONGERA..... 2ND RESPONDENT

THE NAIROBI HOSPITAL..... 3RD RESPONDENT

RULING

1) The subject matter of this ruling is the motion dated 5th February 2021 in which the applicant seeks for leave to appeal out of time. The motion is supported by the affidavit sworn by the applicant. The 2nd and 3rd respondents filed grounds of opposition and a replying affidavit they each swore to resist the application.

2) I have considered the grounds stated on the face of the motion plus the facts deponed in the rival affidavits. I have also considered the grounds of opposition and the rival oral submissions. The main ground put forward by the applicant as the reason which delayed him from filing the appeal within the time specified by law is that he was supplied with the ruling/decision of the Medical Practitioners and Dentists Council after the lapse of 30 days required to appeal. The applicant specifically stated that he actually received the same by email on 26th February, 2021.

3) The 2nd and 3rd respondents filed replying affidavits opposing the application arguing that the same is based on irrelevant provisions of the law. It is also argued that the applicant has deliberately attempted to mislead this court by alleging that the council (1st respondent) had no jurisdiction to determine issues touching on negligence.

4) Having considered the rival arguments, it is clear that the respondents have not controverted the applicant’s assertion that he was supplied with the council’s decision on 26th February 2021 by which time the period to appeal had lapsed.

5) I am therefore convinced that the ground relied upon by the applicant is plausible therefore he is entitled to benefit from the discretion of this court.

6) In the end, I find the motion dated 5th February 2021 to be with merit hence it is allowed. Consequently, the applicant is granted leave of 10 days from the date of this ruling to file an appeal out of time. A fair order on costs is to order, which I hereby do, that each party meets its own costs.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 17th day of September, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant