

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC. CIVIL APPLICATION NO. 16B OF 2020

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT CAP 22 OF LAWS OF KENYA

SAMSON MURUNGI MUNGANIA.....APPLICANT

VERSUS

CENTENARY SACCO SOCIETY LTD.....1ST RESPONDENT

SAMUEL MUGENDI T/A CLEAR REAL AUCTIONEERS.....2ND RESPONDENT

RULING

1. The court is called upon to determine an application under certificate of urgency dated 22/02/2020 brought pursuant to Order 43(1) and Order 50(1) of the Civil Procedure Rules, Sections 75(1) and 21 of the Civil Procedure Act, and all other enabling provisions of the law. In it, the applicant seeks leave to file an appeal out of time and stay of execution against of the order in Nairobi Cooperative Tribunal case No.104/2017 until the appeal is heard and determined.

2. The grounds upon which the application is premised are set out in the body of the application and the supporting affidavit of Samson Murungi Mungania, the applicant herein sworn on 22/02/2020. He avers that the delay in filing his appeal in time was not intentional and that his intended appeal has high chances of success.

3. The application was opposed by the replying affidavit sworn on 4/6/2020, by Benson Muthomi, the chief Executive Officer of the 1st respondent. He contends that the application ought to be dismissed because the applicant has failed to meet the pre-conditions for grant of the orders sought.

4. Despite the court's directions that the application be canvassed by way of written submissions, it appears only the respondents filed.

5. The respondents submitted that the inordinate delay in filing the application has not been sufficiently explained. They maintain that the applicant has evidently failed to meet the pre-requisite conditions set out under Order 42 Rule 6 of the Civil Procedure Rules. The decisions of **Elena Doudoladova Korir v Kenyatta University (2014)eKLR, Congress Rental South Africa v Kenyatta International Convention Centre and Co-operative Bank of Kenya Limited & anor(2019)eKLR** were relied on in support of their submissions.

6. I have anxiously considered the application, the affidavits and the submissions made by the respondents herein together with the court file. The record reveals that the applicant was granted leave to file the appeal way back on the 3/3/2020 and directed to file the appeal within 30 days. That period ended sometimes on or about the 3/4/2020 without the appeal being filed hence on the 17/06/2021, the time was extended by consent for a further period of 14 days but yet again I have not been shown anything to show that any appeal has been filed. Without a pending appeal, there is no basis upon which to grant stay. It therefore follows that the application lacks merit and the same is therefore dismissed with costs.

7. Bing a miscellaneous application, the costs are assessed at Kshs. 12,000/=, so that no more time is spent on having the costs taxed.

DATED, SIGNED AND DELIVERED AT MERU, VIRTUALLY, BY MS TEAMS, THIS 17TH DAY OF SEPTEMBER 2021.

PATRICK J.O. OTIENO

JUDGE