



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**MISC. APPLICATION NO. 27 OF 2019**

**MOHAMED IDI.....APPLICANT**

**VERSUS**

**JUDAH K. MBIJIWE.....1<sup>ST</sup> RESPONDENT**

**LAND ADJUDICATION AND SETTLEMENT OFFICER**

**MERU CENTRAL.....2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR MERU CENTRAL.....3<sup>RD</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The notice of motion filed on 20.6.2019 is brought under section 1A & 1B, 3A, 79G and 95 of the civil procedure Act and order 50 rule 6 as well as order 51 rule 1 of the civil procedure rules. The appellant is seeking leave to appeal out of time against the Judgment of Hon. C.K Obara delivered on 20.12.2018 in Meru CM ELC No. 51 of 2017.

2. The grounds in support of the application are that the judgment was delivered during the festive season and applicant was not financially able to lodge the appeal. He also claims that he is not conversant with court's procedures and process so he was unable to make an informed decision on when to appeal. He contends that the delay in lodging the appeal is not inordinate as to be inexcusable.

3. The 1<sup>st</sup> respondent has opposed the application vide a replying affidavit filed on 8.8.2019, where he avers that the reason given by applicant that judgment was delivered during the festive season is shallow since efforts to file the appeal are being made long after the festive season. It is further contended that applicant had an advocate on record so he can't claim that he was unaware of the court's procedures and processes. It is also argued that no draft memorandum of appeal has been annexed to the application. The 1<sup>st</sup> respondent therefore avers that no substantial reasons have been given by the applicant to warrant the granting of the orders.

4. Section 79 G of the civil Procedure Act provides that:

***“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time”.***

5. Section 95 of the Civil Procedure Act provides that:

***“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired”.***

6. What resonates from these provisions of law is that a court of law has discretion to enlarge time, however an applicant must demonstrate that he has good and sufficient cause for not filing the appeal on time.

7. The judgment by Hon. Obara was delivered on 20.12.2018 in the presence of the applicant and her advocate. He cannot therefore claim

that he was unaware of the procedures and processes of the court. Further even though the judgment was delivered during the festive season, the application itself was filed exactly half a year later on 20.6.2019.

8. In **the SCOK case of Nicholas Kiptoo Arap Salat vs IEBC & 7 others (2014) eKLR**, the court held that:

*“Time is a crucial component in dispensation of justice hence the maxim; Justice delayed is justice denied...”.*

9. The court further stated that;

*“Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.....”.*

10. The applicant has not shown good and sufficient reasons as to why he was unable to file the appeal on time. Further, a delay of half a year yet judgment was delivered in the presence of his advocate and himself is inordinate and inexcusable.

11. I find that the application is not merited. The same is dismissed with costs to the 1<sup>st</sup> respondent.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 22<sup>ND</sup> JANUARY, 2020 IN THE PRESENCE OF:-**

C/A: Kananu

Applicant

Otieno C. for applicant

Gikonyo holding brief for Kirimi for 1<sup>st</sup> respondent

AG for 2<sup>nd</sup> and 3<sup>rd</sup> respondents

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**