



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC APPLICATION NO. 65 OF 2019

LATIF M'IKIARA.....APPLICANT

VERSUS

ERASTUS GATOBU MURIUKI.....RESPONDENT

RULING

1. This matter relates to a Notice of Motion dated 9/10/2019 brought pursuant to **Section 79G Civil Procedure Act** and **Order 51 of the Civil Procedure Rules**. The applicant seeks leave to file an appeal against the decision in Meru CMCC No. 11 of 2017 and that costs be in the intended appeal.

2. The grounds in support of the application are set out in its body and the supporting affidavit of Latif M'Ikiara sworn on 9/10/2019. He being dissatisfied with the judgment delivered on 28/8/2019 failed to file the appeal in due time for the proceedings only became ready on 1/10/2019 when the same were signed and delivered to counsel on record.

3. The application was opposed vide the replying affidavit of Erastus Gatobu sworn on 28/10/2019. He deponed that the application is an afterthought and lacks merits. He avers that the filing of a memorandum of appeal does not require typed proceedings since the record is usually prepared after the appeal is filed. Thus, the explanation given does not suffice. Besides, the applicant did not annex the draft memorandum of appeal to show the seriousness of his appeal.

4. The issue for determination is ***whether to grant leave to the applicant to file his appeal out of time***.

5. **Section 79G of the Civil Procedure Rules** stipulates 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.”

6. Thus for an applicant to be granted leave to appeal out of time, one must satisfy the court, which has discretionary power, that they had a good and sufficient reason for not doing so in time.

7. Judgment was delivered on 28/8/2019, thus by 30/9/2019 is when the applicant ought to have filed his appeal of which he had not. He stated that his counsel received the proceedings on 1/10/2019 which is past the period stipulated in the law. Within six (6) days or thereabout, the applicant had filed this application seeking leave to appeal out of time. I am of the view that the applicant has provided sufficient explanation and demonstrated that delay was not occasioned as a result of his own doing. Moreover, he did not delay in filing the present application.

8. I therefore find that the application is meritorious and the following orders are hereby issued:

1) The applicant is granted leave to appeal out of time, whereby he is to file his appeal within the next fourteen (14) days from today, failure to which the leave granted shall lapse.

2) Costs shall be in the intended appeal.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 19TH FEBRUARY, 2020

IN THE PRESENCE OF:-

C/A: Kananu

Karanja holding brief for Gikunda Anampiu for respondent

Muthomi K. holding brief for Ayub Anampiu for applicant

HON. LUCY. N. MBUGUA

ELC JUDGE