



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: KIAGE, JA. (IN CHAMBERS))

CIVIL APPLICATION NO. 24 OF 2019

BETWEEN

DANIEL OSEBE.....APPLICANT

AND

MANENGA OMAORE.....1ST RESPONDENT

JOSEPH NYANGAU NYAROO.....2ND RESPONDENT

JOHN OSIANGO OGECHI.....3RD RESPONDENT

(Application for extension of time to file notice of appeal out of time against the judgment of (Mutungi, J.) dated 12th October, 2018

in

KISII ELC CAUSE NO. 466 OF 2013)

RULING

I have read the motion before me and the supporting affidavit of the applicant sworn on 15th March, 2019, and have heard **Mr. Bosire**, his learned counsel.

The delay in filing the notice of appeal herein is explained on the basis that the applicant was not aware of the delivery of the judgment until beginning of November, 2018, when he learnt of it from a third party. He then moved with speed and instructed a new lawyer who prepared and filed the notice of appeal dated 6th November, 2018. He filed it on 7th November. His first application for extension of time was filed on 18th December but it was later found to be defective and his current advocates applied to withdraw it on 26th February, 2013.

It is then that this application was filed on 15th March, 2019. Mr. Bosire says that the intervening period was used up in applying to come on record before the Environment and Land Court for the applicant, a move I consider to be of doubtful utility and necessity.

Nevertheless, in the absence of a replying affidavit or other opposition to this application, and the respondent being absent despite service of notice of today's hearing upon his advocate **Mr. Kaburi** on 6th May, 2019, the same is unopposed and the averments in the affidavit in support are uncontroverted.

I think the delay has been explained to my satisfaction, and that it would be in the interests of justice for me to extend time. The application is granted and the notice of appeal lodged on 7th November, 2018, be and is hereby deemed as properly filed.

The applicant shall file and serve the record of appeal within thirty **(30) days** of today.

Costs in the intended appeal.

DATED at Kisumu this 21st day of May, 2019.

P. O. KIAGE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR.