



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT BUSIA

CIVIL CASE NO. 9 OF 2019

THE REGISTERED TRUSTEES

CHURCH OF GOD IN EAST AFRICA.....PLAINTIFF

= VERSUS =

- 1. FREDRICK MAENGE MATARA.....1ST DEFENDANT/RESPONDENT**
- 2. EMMANUEL OTIANGLA.....2ND DEFENDANT/RESPONDENT**
- 3. BOAZ OTANGA.....3RD DEFENDANT/RESPONDENT**
- 4. NEWTON ANUNDA.....4TH DEFENDANT/RESPONDENT**
- 5. DEBORA AMUKOKO.....5TH DEFENDANT/RESPONDENT**
- 6. ROOSE NABUTO.....6TH DEFENDANT/RESPONDENT**
- 7. JARED OTENY.....7TH DEFENDANT/RESPONDENT**
- 8. JOSEPHINE OYARO.....8TH DEFENDANT/RESPONDENT**
- 9. JANE AMUKOS.....9TH DEFENDANT/RESPONDENT**

RULING

1. The plaintiff/applicant moved this court through his application dated 17th September 2016 and brought under the provisions of Section 79G and 95 of the Civil Procedure Act and Order 51 Rule 1 of the Rules. The orders sought are;

a) That the Honourable Court be pleased to enlarge time and grant the Plaintiff/Applicant leave to Appeal out of time against the Ruling of the Honourable Justice A. K. Kaniaru delivered on 25th July, 2019 in High Court Case No. ELC No. 198 of 2014.

b) That costs be in the cause.

2. The application is supported by the grounds listed on its face *inter alia*;

(i) That the ruling in High Court Case No. ELC No. 198 of 2014 was delivered by Hon. Justice A. K. Kaniaru on or around 25th July, 2019 dismissing the Plaintiff /Applicant's application dated 20/7/2018 with costs to the Respondents.

(ii) That the plaintiff/applicant is aggrieved by the whole of the said decision and wishes to appeal against the whole of the said decision.

(iii) That as advocates on record for the plaintiff/applicant we were never informed on the ruling date prior to its delivery and that being so, were unaware that a ruling had been delivered on the 25th July 2019.

(iv) *That the advocates on record for the plaintiff/ applicant only came to learn that the ruling in relation to the matter had been delivered on or around 26th August, 2019 when the defendants/respondents counsel served my firm with a Bill of costs dated 1/8/2019.*

(v) *That the plaintiff/applicant now seeks an order for leave to file its appeal out of time.*

3. The application is opposed by the grounds dated 7th October 2019 which states thus;

- 1) *That the court lacks jurisdiction.*
- 2) *That no notice of appeal has been filed and served to date.*
- 3) *That the application is incompetent and misconceived ab intio.*
- 4) *That the applicant is guilty of inordinate delay.*
- 5) *That the parties were duly informed/notified of the ruling.*
- 6) *That the application is an afterthought, an abuse of the court process.*
- 7) *That the application lacks merit.*

4. There is only one issue for determination that is; whether or not this court has powers to enlarge time to lodge an appeal to the Court of Appeal. What is annexed to the affidavit in support of the application is a draft notice of appeal marked as “GKM3” meaning there was no notice of appeal lodged within the prescribed time. In Section 2 of the Civil Procedure Act, Court is defined to mean the High Court or subordinate Court acting in exercise of its civil jurisdiction. Therefore Section 95 in my understanding refers to the Court as defined in Section 2 above. Section 95 provides thus;

“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.”

5. Section 79G deals with time for filing appeals from the subordinate courts to the High Court. The rule that provides for time for filing of appeals to the Court of Appeals is Rule 4 of the Court of Appeal Rules. Rule 4 states thus;

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

6. In the Case of *Wakaba Ndegwa & Ano Vs Lucy Nyaguthi (2017) eKLR*, the Court of Appeal in paragraph 6 of its ruling stated thus;

“6. Rule 4 has enhanced the amplitude of the discretionary power to extend time limited either by the rules or by the orders of this Court with the object of facilitating filing of appeals and ultimately determining disputes on merit. In effect, rule 4 militates against the harshness resulting from the strictness of the time-lines in the rules or orders of the Court. Clearly, the rule 4 is designed to enhance justice. As stated on 18th November 2016 in Teresa Mila Lopes versus Abdul Hasis Hajow and another [Civil Appeal No.148 of 2014 rule 4 serves “as a recognition of human frailties and fallibility. Because human beings will from time to time err or make mistakes, it behoves courts to be flexible, objective, and practical when considering applications for extension of time by those wishing to pursue their appeals. However, each case must be considered and determined on its own merits. But mistakes due to inadvertence or unavoidable circumstances ought to be excused. However, a litigant requires to be alert and vigilant.”

7. It is inferred from the above statement that the exercise of discretion on whether to extend time or not in respect to appeals to the Court of Appeals lies with that Court. The reasons contained in the grounds in support of the motion can only be considered by the court where the appeal lies to. The Environment and Land Court cannot usurp the powers of the Court of Appeal to extend time where no notice of appeal was lodged. The provisions of Article 159 of the Constitution cannot also be invoked where the Court has no jurisdiction to determine a matter. Similarly the facts of the Case of *Samuel Mwaura Muthumbi Vs Josephine Ngugi & Another (2018) eKLR* would apply if this Court had jurisdiction to exercise the discretion sought.

8. In the Case of *Jennifer Njuguna & Ano Vs Robert Gichuchi (2017) eKLR*, the Applicant sought orders for enlargement of time to file memo of appeal from the judgment rendered between the parties in the lower court in Kiambu CMCC No. 135 of 2016. A similar scenario applies to the Case of *Kinyunjuri Muguta Vs Wotuku Muguta (2018) eKLR* cited by the applicant.

9. In conclusion, I am persuaded to find as urged by the respondents that this court lacks jurisdiction to grant the orders sought herein. I therefore strike out the application for want of jurisdiction with costs to the respondents.

Dated, signed and delivered at BUSIA this 12th day of March, 2020.

A. OMOLLO

JUDGE