

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MISC. APPLICATION NO. 8 OF 2019

GEOFFREY MWITHALII.....1ST APPLICANT

GERALD MICHUBU.....2ND APPLICANT

VERSUS

STANLEY KIUNGA.....RESPONDENT

RULING

1. The application dated 9.2.2019, is brought under the following provisions of law: **“Sections 1A, 1B, 3A and 89 of the Civil Procedure Act, cap 21 of the Laws of Kenya and order 51 rule 1 and order 50 rule 6 of the civil procedure rules”**.

2. The applicant is seeking orders to file the memorandum of appeal out of time in respect of the judgment and decree of the SRM’s court at Maua (honourable A.G Munene) dated 31.10.2018 issued in Maua Court Land case no. 132/2017.

3. The grounds in support of the application are that the applicants are aggrieved by the decision of the learned magistrate’s court and desires to appeal to this honourable court against the entire decision. The filing of the memorandum of appeal can only be with leave of court and after enlargement of time to do so given that the 30 days allowed under the law have expired.

4. The applicant contends that there is risk of execution since the stay issued by the learned magistrate expired on 31.1.2019. Their failure to file the memorandum of appeal on time was occasioned by their advocates, but they have now instructed another firm of advocates. Applicants aver that they have plausible grounds of appeal, that the present application has been filed without undue delay and that it will be in the interest of justice to allow the applicant an opportunity to be heard by this court.

5. I did not see a replying affidavit of the respondent. However, both parties have duly filed their submissions which I have considered.

6. I find that the applicant has given a plausible account as to why he was unable to file the appeal on time. The judgment was delivered on 31.10.2018 and thereafter, the advocate for the applicant made a request for the typed proceedings on 19.11.2018. Meanwhile, the court had granted a stay which was to lapse until 31.1.2019. This application was filed few days thereafter on 11.2.2019. I find that the delay is not inordinate. Further, it is apparent that the applicant was also in the process of changing his advocate when the time to lodge the appeal lapsed.

7. All in all, I allow the application on condition that the memorandum of appeal is filed and served within 45 days from the date of delivery of this ruling. Applicant is to meet the costs of this application.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE