

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MISC. APPL NO. 72 OF 2019

SHERIFF IBRAHIM FARAHAPPLICANT

VERSUS

KAMENCHU M'MINGAINE.....1ST RESPONDENT

M'MBURUNGA2ND RESPONDENT

RULING

1. Vide the application dated 30.10.2019, the applicant is seeking orders to file an appeal out of time against the judgment of E. Mbicha SRM delivered on 18.9.2019 in Meru CMCC No. 381/11.

2. The application is premised on the grounds set out on the face of it and in the affidavit of the applicant. The applicant contends that after judgment was delivered, they applied for typed proceedings which were supplied on 23.10.2019 after the expiry of the required time to appeal.

3. The respondents have opposed the application vide the replying affidavit of the 2nd respondent dated 31.1.2020. The respondents contend that the document requesting for typed proceedings is a forgery, that the draft memorandum of appeal does not raise arguable issues, that there is no certificate of delay from the Deputy Registrar and that applicant has not demonstrated how he stands to be prejudiced if the application is not allowed.

4. I have considered all the issues raised herein. I have not seen any certificate of delay. However, I have taken into account that this application was filed on 31.10.2019. The judgment having been delivered on 18.9.2019, the appeal was supposed to have been filed by 18.10.2019. The delay was just a matter of days, 12 or so. That delay is not inordinate.

5. I thus find that the application is merited. The same is allowed but with costs to respondents. The appeal to be filed within 45 days.

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