



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION
MISCELLANEOUS APPLICATION NO.46 OF 2014

MURI MWANIKI & WAMITI ADVOCATES.....APPLICANT/ADVOCATE

VERSUS

EDWARD MUKUNDI KARANJA.....1ST RESPONDENT/CLIENT

VERONICA WANJIKU KARANJA.....2ND RESPONDENT/CLIENT

EMMANUEL MWANGI KARANJA.....3RD RESPONDENT/CLIENT

RULING

The Applicant by Notice of Motion application dated 15th March 2018, sought for orders that:

- (a) Time for making an application for leave to appeal by the Applicant/Advocate against the order of the Court made on the 30th October, 2017 be extended;
- (b) Leave be granted to the Applicant/Advocate to appeal against the Order of the Court made on the 30th October 2017; and
- (c) Time for giving the notice of appeal by the Applicant/Advocate against the Order of the Honourable Court made on the 30th October 2017.

The Application is founded on the following grounds:

- (a) The Judgment/Order was set for delivery on notice but the Applicant/Advocate did not learn about the delivery of the said Judgment/Order until on or about 1st March 2018 upon receiving communication of its delivery through the Honourable Court's letter of 21st February 2018;
- (b) By the time of receiving the said notification, legal timelines for making application for leave to appeal and to lodge notice of appeal had long lapsed;
- (c) The Advocate wishes to appeal against the said judgment and Order of 30th October 2017 and it is only fair that the time within which to make the application for leave to appeal be extended, the said leave to appeal be granted and that the time within which to issue the notice of appeal be extended.

SUBMISSIONS ON BEHALF OF THE APPLICANT/ADVOCATE

Issues for Determination

From the Application, the Applicant invited this court to address the following issues:

- (i) Extension of time to file a Notice of Appeal from the Court's judgment as provided under **Section 7** of the **Appellate Jurisdiction Act**, (Prayer 3 of the Application).
- (ii) Leave to appeal under **Section 75** of the **Civil Procedure Act** (Prayers 1 and 2 of the Application).

(iii) Costs, (Prayer 4 of the Application).

I. Extension of time to file a Notice of Appeal from the Court's judgment as provided under Section 7 of the Appellate Jurisdiction Act, (Prayer 3 of the Application). Section 7 of the Appellate Jurisdiction Act provides as follows:

"7. Power of High Court to extend time

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:

Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence."

This Section was applied in the Court of Appeal in the case of ***Kenya Airports Authority & Another v Timothy Nduvi Mutungi [2014] eKLR***; where an application for extension of time to lodge Notice of Appeal was filed in the High Court and the High Court declined to hear it, instead asking the Applicant to file the application in the Court of Appeal ***Githinji JA***, stated as follows:

"The application of 10th December, 2012 was properly made in the High Court as High Court has power to extend time for giving notice of intention to appeal pursuant to Rule 7 of the Court of Appeal Rules (sic) (clearly meant Section 7 of the Appellate Jurisdiction Act) which provides:

"The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired."

Since the application for extension of time for lodging a notice of appeal made in the High Court was competent and which the High Court should have determined..."

RESPONDENTS' WRITTEN SUBMISSIONS

(a) The Applicant approached this court by way of a notice of motion dated and filed on 12th April 2018 seeking leave to appeal against the Judgment of this Court delivered on 30th October 2017 as well as extension of time to prefer the said appeal if leave is granted.

(b) In response thereto, on 14th May 2018, the Respondents filed Grounds of Opposition of even date. The Respondents also on 4th May 2018 filed their List of Authorities dated 2nd May 2018. The Respondents shall rely on these together with the present submissions.

(c) So as to avoid unnecessary duplicating documents already before the court, the Respondents shall rely on the cases produced in their List of Authorities aforesaid.

ON RIGHT TO APPEAL

In the case of ***Joel Nyabuto Omwenga & 2 Others v Independent Electoral and Boundaries Commission & Another [2014] eKLR***, the Court of Appeal allowed an application to strike out an appeal on the basis that no right of appeal lay against the impugned decision. The court held:

"Mr. Wikinson who appeared on behalf of the appellant advanced what we consider an ingenious argument that there is a right of appeal...because it is not expressly prohibited. We cannot accept this argument. It is well established that there is no right of appeal apart from statute, either it is expressly granted by statutory authority, or it is not. There is no right of appeal by mere implication or by inference."

From the above circumstances advanced by the Applicant that the Applicant was not aware of the Court's Ruling on the matter despite notices being issued. That absence and information of the delivery of the Ruling vitiated the Applicant's right to lodge an appeal on time. I hereby extend the period for lodging the appeal within 30 days from delivery of the instant Ruling.

DELIVERED DATED & SIGNED IN OPEN COURT AT NAIROBI ON 4TH OCTOBER 2019.

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF:

MR. LITORO H/B MR. ALLEN GICHUHI FOR THE RESPONDENT

N/A FOR APPLICANT

COURT ASSISTANT- MS JASMINE