



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC MISC. APPL. NO. 2 OF 2020

GRACE ACHIENG ODHIAMBO.....APPLICANT

VERSUS

ALEX ONYANGO OMBAGO (Suing as the admin & personal re of the estate of

ALEXANDER OKECH & JACOB JOSEPH OMBAGO.....DEFENDANT

RULING

Grace Achieng Odhiambo hereinafter referred to as the applicant seeks leave of this court to appeal out of time. The grounds of the application are that the applicant had not issued formal instruction to his advocate to proceed with the appeal. It is stated that the applicant could not meet the costs of instruction the appeal as the only source of income was the said property which as a result of the lower court decision was taken from her.

The applicant undertakes to expedite the prosecution of the appeal should the court allow the application. No prejudice will be suffered by the respondent if the appeal is allowed. The applicant had constructed 2 bedroomed houses. The Respondent filed grounds of opposition to the effect that the application lacks merit and that the appeal lacks merit and that the delay is inordinate and inexcusable and that no reasons has been given for the delay.

I have considered the application and the oral submissions and do find that Judgment was made on 26/10/2020. A delay of more than one year is inordinate and inexcusable. The explanations given appear an afterthought as the instructions fees that was to be paid to the firm of Kowinoh & Company advocates is not mentioned.

The central question is whether the justice of the case requires an extension. In general, this is informed by several factors, namely:

- (1) Whether the appellant had a *bona fide* intention to appeal within the appeal period;
- (2) Whether there is an adequate explanation for the delay beyond inadvertence;
- (3) Whether there is an arguable ground for appeal; and;
- (4) Whether the respondent is prejudiced by the delay.

On whether the applicant had intention to appeal, this court finds that after the judgment, no request for proceedings was made and it can be safely concluded that the applicant had no intention to appeal and that the filing of the memorandum of appeal is an afterthought. The allegation that the applicant had no funds to pay instruction fees is not sufficient explanation for the delay of one year.

The applicant has not demonstrated to this court in the affidavit that the appeal has merit. That it is not clear how much the property was fetching in terms of rent. The application is dismissed with costs.

DATED AND DELIVERED THIS 27th DAY OF APRIL, 2020.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

This judgment is hereby delivered to the parties by electronic mail due to the measures restricting court operations due to COVID -19 pandemic and in light of directions issued by the Honourable Chief Justice on 15TH March 2019 and with the consent of the parties.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE