



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL MISC. APPL. NO. 299 OF 2015

JOSEPH NJOROGE.....1ST APPLICANT

TABITHA NYAMBURA.....2ND APPLICANT

JEMIMAH CHEGE.....3RD APPLICANT

JOHN KAGIRI KIMAKO.....4TH APPLICANT

JOHN CHEE NDONGA.....5TH APPLICANT

GRACE NJUGUNA NDONGA.....6TH APPLICANT

(All suing in their capacity as member of the Muikamba Welfare Self Help Group)

- V E R S U S -

PAUL NDUTI -CHAIRMAN.....1ST RESPONDENT

ELIKANAH KAMAU –SECRETARY.....2ND RESPONDENT

JOSEPH NGURE – TREASURER.....3RD RESPONDENT

(Being sued in their capacity as the officials of the Muikamba Welfare Self Help Group)

RULING

1) The applicants herein took out the motion dated 10.7.2015 in which they sought for *inter alia* leave to appeal out of time. The motion is supported by the affidavit of Namada Simoni. The respondents filed the replying affidavit of Paul Nduti to oppose the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.

2) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application plus the rival written submissions. It is the submission of the applicants that on 18.11.2014 judgement in the sum of ksh.1,134,000/= was delivered in favour of the respondents and against the applicants.

3) The applicants aver that they immediately applied for certified copies of proceedings and judgment which were supplied on 29.5.2015, long after the time to appeal had lapsed. It is for this reason that the applicants are now seeking for leave to appeal out of time.

4) The respondents have strenuously opposed the application claiming that the same was filed after an inordinate delay.

5) It is important to note that the respondents do not deny the applicants' averment that the failure to file the appeal within time was due to the failure by the court to supply typed proceedings and judgment on time. The main contention raised by the respondent is that the application for leave was filed after an ordinate delay.

6) It is not in dispute that the typed proceedings and judgment were supplied to the applicants on 29.5.2015. The current motion was filed on 14.7.2015, a period slightly over a month. I am convinced that the application for leave to appeal out of time was filed timeously. I am also satisfied that the applicants have offered a plausible reason which delayed them from filing the appeal within the statutory period required to file appeals. Consequently, I grant the applicants leave of 15 days to file an appeal out of time. In the circumstances of this matter, I think a fair order on costs is to direct which I hereby order that each party bears its own costs.

Dated, Signed and Delivered in open court this 4th day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent