



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISC. APPLICATION NO. 80 OF 2017

BERNADATTE MBAIRE MUCHAIPROPOSED APPELLANT

-VERSUS-

EDWARD GATONYE MUCHAL.....ROPOSED RESPONDENT

RULING

1. The application before court is dated 31st May 2017 and in essence seeks for 2 prayers; leave to appeal out of time and for the Memorandum of Appeal on record be deemed as duly filed.
2. To support the application counsel for the Applicant relies on the ground that the ruling subject matter was delivered in his absence and without notice, further that there was miscommunication between him and counsel for the Respondent as relates to the date the ruling was to be delivered. Counsel argues also that the delay was not inordinate and the appeal raises arguable issues.
3. The application was objected to through grounds of opposition and a replying affidavit; where the Respondent took issue with the counsel for the Applicant swearing the affidavit, argued that against the existing final orders in the suit below this application is not merited and further that the affidavit in support of the application is full of false and misleading information.
4. Having considered the application, the response and submissions I am of the view that for now the court ought to confine itself to the issue in question whether to admit the appeal out of time or not. The court has not been furnished with the proceedings of the lower court; neither is it time for the court to form an opinion as to whether the appeal is merited or not.
5. Considering the information on record it is clear that there is an issue of miscommunication of the date when the ruling was to be delivered, this issue between the two counsels elicited emotions but remained unresolved, what was not disputed is that the ruling subject matter was not ready on the date it was due and a fresh date was issued in the absence of the applicant’s counsel and no formal notice of the next date was issued.
6. Courts have held that mistakes of counsel ought not be visited on litigants and secondly unless for grave reasons a litigant’s door ought not to be shut.

For the above reasons I will allow prayer 1 of the application dated 31st May, 2018.

The intended appeal be filed within 14 days.

Costs in the cause.

SIGNED, DATED and DELIVERED in open court at NAIROBI this 12th day of July, 2018.

.....

ALI-ARONI

JUDGE

In the presence of:

Counsel for the Proposed Appellant.....

Counsel for the Proposed Respondent.....