



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC MISC APPL. NO. 7 OF 2018

SAMUEL K. NGERECHI.....1ST APPLICANT

RICHARD K. BOSEK.....2ND APPLICANT

WILSON K. SANG.....3RD APPLICANT

JOSEPH MOSONIK.....4TH APPLICANT

-VERSUS-

JOSEPH KIPKOECH NGERECHI.....RESPONDENT

RULING

By a Notice of Motion dated 4th May, 2018 and brought under Section 79 G of the Civil Procedure Rules and Order 50 Rule 6 of the Civil Procedure Rules, the applicants sought for the following orders: -

1. Spent
2. The court be pleased to grant an extension of time to file appeal from the ruling of the Senior Principal Magistrate, Narok (Hon. Sitati) dated 23rd December, 2015.
3. The Memorandum of Appeal attached hereto be deemed to be duly filed after the payment of court fees
4. There be an urgent order of stay of execution of the order of Eviction given on 23rd December, 2015 pending the hearing of this application.
5. Costs of this application be in the cause.

The Application is based on the grounds that Judgement had been entered on 23rd April, 2018 and the decree issued in favour of the applicants on 23rd June, 2016. However, the trial court had conducted a hearing to cross examine the averments of both parties.

The Application was opposed by the respondents and he deponed that no compelling reasons have been given by the applicant to show they did not file their pleadings within the time frame allocated by law. The respondent further averred that the applicants have not stated the grounds upon which the application is based and further that the applicants had filed a previous suit being Narok ELC No. 418 of 2017 in which the court had made a determination that the same was res judicata vide a ruling made on 18th April, 2018.

I have considered the application before me and the submissions made by the parties and the issue for determination before me is whether the applicants have made a compelling reason why the court should grant an extension of time to file their appeal out of time. From the application as rightfully pointed out by the respondents the applicants have not demonstrated to the court what are the reasons that made them not file their appeal within the intended time. They have glossed over the issues that have transpired in the lower court. However, I will exercise my discretion and in the spirit of Article 159 (2) (b) of the Constitution of Kenya 2010 disregard the procedural technicalities such as the sufficient reasons to allow the application moreover, the courts have time and again found that the right of Appeal is constitutional right and to deny a party that right shall amount to denying him access to justice and in the circumstances I will allow the Notice of Motion dated 4th May, 2018 and accordingly extend the time within which the applicants intended appeal would have been filed on the condition that the appeal herein be filed within 60 days of the ruling herein.

Each party shall bear its costs.

DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 10th day of June, 2020.

Mohammed Kullow

Judge

10/6/2020

In the presence of:

CA:Chuma

Ms Karia for the applicant

N/A for the respondent