



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUSIA**

**CASE NO. 32 OF 2015**

**GODFREY ODUORI ONDERO.....PLAINTIFF/APPLICANT**

**= VERSUS =**

**REDEMPTOR TEDDY WERE..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**ALBERT HUSSEIN KARANI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. For determination is the notice of motion application dated 30<sup>th</sup> June 2020 brought under the provisions of Section 7 of the Appellate Jurisdiction Act, Rule 4, 42 and 75 of the Court of Appeal Rules and all other enabling provisions of the law. The orders sought are;

**1) Spent**

**2) That pending the hearing and determination of this application the Honourable Court be pleased to stay execution of the decree issued herein.**

**3) The Honourable Court be pleased to extend time for filing Notice of Intention to Appeal and Appeal against the Judgment by Honourable Court delivered on 15<sup>th</sup> April 2020.**

**4) Upon determination of the Application herein, Prayer 2 above be confirmed to apply till final disposal of the Appeal.**

**5) Costs of this application be provided for.**

2. The application is premised on the grounds *inter alia*;

*1) That the judgement against which the Applicant is aggrieved and desires to file an Appeal was delivered on 15<sup>th</sup> April 2020 by email sent to the Applicant's advocates email address.*

*2) That by the time the judgement was delivered, COVID 19 control measures were in force discouraging, people to move out of their homesteads, and this delayed a meeting between the applicant herein who is ordinarily resident in Budalangi and his Advocate on record who ordinarily resides in Busia to discuss the contents of the judgement and take appropriate instructions.*

*3) That a meeting has since taken place and the Applicant herein being aggrieved by the judgment as delivered desires to file an appeal at the Court of Appeal to challenge the judgement but the statutory time within which to file the Notice of Appeal and the Appeal lapsed hence the instant application.*

3. The application is supported further by the affidavit sworn by the applicant on 6<sup>th</sup> July 2020. He deposed that he learnt from his advocate on record that judgment was delivered in this suit on 15/4/2020 via email while he was held up in Budalangi because of the Covid-19 Regulations. That by the time he got the information, the time within which to file a notice of appeal had lapsed. That he is aggrieved by the judgement and prays for time to be extended. He also prays for stay of execution on costs once taxed.

4. The defendants opposed the application by filing grounds of opposition dated 9<sup>th</sup> July 2020. The grounds raised include;

*1) The application is an abuse of due process of the law.*

*2) There is nothing in the decree to be stayed.*

3) *The applicant has not offered security for costs.*

5. The parties filed brief submissions which I have read and considered. The Respondents in their submissions had no objection for time being extended to file notice of appeal. They submitted that the court does direct the Applicant to deposit a sum of Kshs. 200,000 as security for costs.

6. In the Case of *Edward NjaneNga'ng'a&Ano Vs Damaris WanjikuKamau&Ano (2016) eKLR* Waithaka J faced with a similar application quoted Munyao J extensively in the Case of *LoiseChemutaiNgurule&Ano Vs Winfred LeshwariKimung'en& 2 others (2015) eKLR*. In the cited case, Munyao J stated by citing section 7 of Cap 9 drawn as follows;

***“Sec 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.”***

7. The question herein is whether the delay to file the notice of appeal is excusable. It is public knowledge that Covid-19 broke out in Kenya in March 2020 and the Chief Justice in his wisdom decided to suspend open court operations on 16/3/2020. Since then most of the activities have been undertaken online. Similarly, the President of the Republic around the same period suspended the operations of public transport until sometime in June 2020 when regulated operations were allowed to resume.

8. I find the explanation that the applicant was unable to meet his advocate as reasonable. **In the circumstances, I am persuaded to exercise my discretion in the Applicant's favour by extending time within which to file notice of appeal against the judgement of this court FOURTEEN (14) days from the date hereof.** In any event, the Respondents are not objecting to an order for extension of time.

9. The applicant also prayed for stay of execution of the costs which were taxed on 8/7/2020. To enable the applicant, pursue his appeal, it is in the interest of justice that stay be given. Taking note of the interest of the defendants/respondents, I direct that the applicant shall deposit 50% of taxed costs in an escrow account opened in the joint names of the advocates on record for the parties. The said deposit to be made within 60 days from the date of this ruling.

10. Each party to bear their costs of this application.

**Ruling dated, signed and delivered electronically at Busia this 20-8-2020**

**A. OMOLLO**

**JUDGE**