



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 138 OF 2015

(Being an appeal from the ruling of the Hon.Kimanga (Mr) Resident Magistrate, given on 16th July, 2016, in Chief Magistrate Civil Suit No.1046 of 2014 LAELI KAVEMBA, PETER KAVEMBA AND JOSEPH KAVEMBA VERSUS SAID SULEIMAN)

SAID SULEIMAN.....APPLICANT

VERSUS

1. LAELI KAVEMBA

2. PETER KAVEMBA

3. JOSEPH KAVEMBA.....DEFENDANTS

RULING

1. Before me is an application by way of notice of motion dated 2/9/2015 and filed in court on the 9/9/2015.

It seeks orders that the time to file an appeal be extended on grounds that the decision sought to be appealed against was delivered in the absence of the applicant without notice and that the instructions to appeal were received on the 15/8/2015 the day the period of lodging the appeal was due to lapse.

2. In my view there is scanty material placed before the court. In an application of this nature it was necessary to avail to court; the date the matter was last before court to demonstrate what orders was made and that the date of delivery of the Ruling was indeed never communicated to the applicant. It would also be desirable to exhibit the proceedings, even if ti be the handwritten copies to show that the applicant was not present at the delivery of the ruling. These are matters that a little candour would have availed. To the contrary the grounds in both the application and affidavit in support are very scanty even though the same is unopposed. I have however looked at the entire record including the draft memorandum of appeal and the oral submissions which for the first time state that the applicant was not present on the delivery of the ruling sought to be challenged. If that be true, as it is not contested, then the provision of Civil Procedure Act would be of assistance.

Order 20 Rule 1 Civil Procedure provide:

“in a suit where hearing is necessary, the court, after the case has been heard, shall

pronounce judgment in open court, either at once or within sixty days from the conclusion of that notice of motion shall be given to the parties or that advocates.”

To me it is not a luxury hat parties be notified of the date and time set for a determination. It is a cardinal requirement which goes with the right to be heard.

3. Doing the best can on the scrutiny of the record before me, I take it from Mr.Chekera's submissions that they were not given notice of the ruling to be delivered on the 16/7/2015. That in itself would be contrary to the provision cited above and therefore a reason to enlarge time.
4. Secondly the grounds of appeal seem to suggest that the matter before the lower court concerned use and/or occupation of land and the question of jurisdiction may just arise on the appeal. That would present an regular appeal.
5. Thirdly the application was presented some 24 days out of time and I consider the delay not to be inordinate.
6. Consequently I grant the application, extend the time for lodging the appeal and order that the appeal be filed within 14 days from today.
7. No order as to costs.

Dated, signed and delivered at Mombasa this 4th day of November 2015.

In the presence of: Mr.Chekera for the Applicant.

No appearance for the Respondent.

P.J.O.OTIENO

JUDGE