



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC MISC. APP NO. 9 OF 2020

LYDIA NDURU MIRITI.....1ST APPLICANT

JUDITH KAROKI KIRIMI.....2ND APPLICANT

CHARITY KINANU KABURU.....3RD APPLICANT

EVANGELINE M. KIENDE GICHURU.....4TH APPLICANT

VERSUS

GERALD MARANGU WILSON.....RESPONDENT

RULING

1. Before me is a notice of motion brought pursuant to provisions of Section 1A, 1B, 3A and 79 G of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules seeking leave to file an appeal out of time against the Judgement/Decree of the Principal Magistrate Githongo Law Court dated 4/5/2020 in Githongo ELC suit No. 83 of 2018.

2. The application was based on the grounds on the face of it and on the supporting affidavit of Lydia Nduru Miriti who stated that the delay was occasioned by the court which had heavy work load and court organization due to Covid 19 pandemic. The applicants aver that they were not satisfied with the judgement which was delivered on 4/5/2020 where their case was dismissed. On the same date, their advocate applied for a typed copy of the judgement but the same was not forth coming in good time. The copy of decree was not signed until 4/6/2020 and by then, the 30 days had expired.

3. The application was opposed vide the replying affidavit of Gerald Marangu Wilson dated 7/7/2020. He contends that the application has no merit as the applicants were in court when the judgement was being delivered and no proper explanation has been made for the delay.

4. I have carefully perused through the application, affidavits and the respective submissions of the parties. I do make reference to the provisions of **Section 79G** of the **Civil Procedure Rules** where it is stipulated that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time (Emphasize added).

5. Therefore, an applicant needs to satisfy the court that he/she had good and sufficient reasons for not filing the appeal on time for the court to exercise its discretion in his/her favour.

6. The Supreme Court in the case of Nicholas **Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** has laid down principles which the court may consider in exercise of this discretion as follows:

“(i) “Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;

(ii) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.

(iii) Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

(iv) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

(v) Whether there will be any prejudice suffered by the respondents if the extension is granted;

(vi) Whether the application has been brought without undue delay;

(vii)

7. In the case of **Fahim Yasin Twaha vs Timamy Issa Abdalla & 2 Others [2015] eKLR**, the court had this to say on issue of extension of time to appeal.

“Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court. A party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court; Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis”.

8. Thus extension of time is not a right and a party needs to adequately demonstrate that the court’s discretion should be exercised in their favour. The applicants have given a plausible account of how they engaged the trial court in order to commence the process of appeal. They approached the trial court requesting for the proceedings the very day that judgment was delivered on 4.5.2020.

9. I have also taken into account that the Covid 19 pandemic has adversely affected the normal operations of the courts. Finally, I have considered that there was no inordinate delay in the filing of the current application and that a draft memorandum of appeal has been availed. I therefore find that the applicants have demonstrate seriousness to lodge the appeal, hence this court is inclined to allow the application in the following terms;

i. The applicant is hereby granted leave to file and serve the memorandum of appeal within 14 days from date of delivery of this ruling failure to which the orders granted herein shall lapse.

ii. Each party to bear their own costs of this suit.

DATED, SIGNED AND DELIVERED AT MERU THIS 21ST DAY OF OCTOBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 22.9.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE