



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 276 OF 2013

(FORMERLY HCCC No. 45 OF 2009 (O.S))

RAEL CHEPNGETICH EMAINA.....PLAINTIFF

VERSUS

CHELULE ARAP MAINA.....1ST DEFENDANT

ZAKAYO CHESIMET.....2ND DEFENDANT

RULING

1. By Notice of Motion dated 17th July 2020, the plaintiff seeks the following orders:

- 1) *Spent*
- 2) *That the firm of Raydon Mwangi and Associates be allowed to come on record for the plaintiff herein post-judgment.*
- 3) *That the court be pleased to grant the applicant herein leave to appeal against the judgment of the honorable Justice D.O. Ohungo delivered/ given on the 18th day of June, 2020 out of time.*
- 4) *That costs be in the cause*

2. The application is supported by an affidavit sworn by the plaintiff. She deposed that her advocate called her on 2nd July 2020 and informed her that he received judgment herein through email on 1st July 2020 and further asked her to visit his office for a discussion on the matter. That being a senior citizen, she could not travel to the advocate's office owing to her vulnerability to the COVID-19 virus. That she was able to hire a private vehicle on 15th July 2020 when she travelled to her advocates' office whereupon she instructed the advocate, after some discussion, to appeal against the judgment herein but by then time for appealing had lapsed.

3. Although served, the defendants neither attended court at the hearing of the application nor filed any response to it. The application is thus unopposed.

4. I have considered the application together with all the material on record. The applicant has not cited any enabling provisions on the face of the application. I note that prayer 2 seeks leave to change advocates after delivery of judgment. In that regard, **Order 9 Rule 9** of the **Civil Procedure Rules** provides:

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

(a) upon an application with notice to all the parties; or

(b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

5. Judgment was delivered herein on 18th June 2020. As at that date, the applicant was represented by the law firm of B.I. Otieno & Co. Since the plea to change advocates comes after judgment and considering that the application has been served, I see no reason why the applicant should not be allowed to change advocates. Needless to state, she has the right to be represented by an advocate of her choice.

6. Regarding the prayer for leave to appeal against the judgment out of time, I note that the date of delivery of judgment was fixed in court on 11th December 2019 in the presence of counsels for all parties. Judgment was ultimately delivered on the scheduled date, 18th June 2020, albeit remotely through video conference owing to the COVID-19 pandemic. None of the parties or their advocates attended court on the date of delivery.

7. Counsel submitted orally that the order should be granted pursuant to **Section 95** of the **Civil Procedure Act**. The section provides as follows:

Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.
[Emphasis supplied]

8. Time for appealing to the Court of Appeal against a judgment of this court is governed not by any order of this court or any provision of the **Civil Procedure Act** but by **Rule 75 (1) and (2)** of the **Court of Appeal Rules, 2010** which provide:

(1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.

(2) Every such notice shall, subject to rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal.

9. Consequently, this court does not have jurisdiction to grant enlargement of time under **Section 95** of the **Civil Procedure Act**. Instead, jurisdiction in the matter rests with the Court of Appeal under **Rule 4** of the **Court of Appeal Rules, 2010**. In the circumstances, the applicant should take the plea for leave to appeal against the judgment of this court out of time to the Court of Appeal. I will therefore not consider that aspect of the application.

10. In the end, I make the following orders:

a) The firm of Raydon Mwangi and Associates is hereby allowed to come on record for the plaintiff herein post-judgment.

b) The firm of Raydon Mwangi and Associates to file and serve Notice of Change of Advocates on Messrs B.I. Otieno & Company Advocates and on all other parties within 14 (fourteen) days from the date of delivery of this ruling.

c) Costs in the cause.

Dated, signed and delivered at Nakuru this 1st day of October 2020.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff/applicant

Mrs Mbeche for the defendants/respondents

Court Assistants: Beatrice Jelimo & Julius Lotkomo