



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 1029 OF 2012

GECY SYSTEMS LIMITED.....PLAINTIFF

VERSUS

TOM ODAGO OPIYO.....1ST DEFENDANT

MAANGI OTIENO & CO. ADVOCATES.....2ND DEFENDANT

REGISTRAR OF TITLES.....3RD DEFENDANT

AND

OFFICIAL RECEIVER & LIQUIDATOR OF CREDIT FINANCE LIMITED..1ST INTERESTED PARTY

KISAUNI PROPERTIES LIMITED.....2ND INTERESTED PARTY

TERAZZO ENTERPRISES LIMITED.....3RD INTERESTED PARTY/APPLICANT

RULING

1. This is the notice of motion dated 7th February 2020 brought under section 3A and Section 95 of the Civil Procedure Act and Order 50 (6) of the Civil Procedure Rules and all other enabling provisions.

2. It seeks orders:-

(1) Spent.

(2) Spent.

(3) That the Notice of Appeal and letter to the Deputy Registrar attached herein be deemed as duly filed and served.

3. The grounds are on the face of the application and are set out in paragraphs (a) and (f).

4. The application is supported by the affidavit of Babra Murithi, advocate of the 3rd Interested Party/Applicant sworn on the 7th February 2020.

5. In response to this application the plaintiff/respondent filed a notice of preliminary objection dated 30th April 2020.

6. The grounds are:

(a) The applicant had filed an application dated 25th March 2015, seeking to stay execution, set aside and review the judgment that had been delivered on 24th October 2014.

(b) The plaintiff and the 3rd interested party/applicant both filed and served their written submissions and were directed to appear

before Honourable Lady Justice Komingoi on 10th April 2019 for ruling.

(c) On 10th April 2019, the honourable court directed that the ruling was not ready for delivery thus it will issue and serve ruling notices to the parties.

(d) That sometime in August 2019, we sent our clerk to check on the progress of the case to which were informed that the matter was still pending ruling and that notices will be issued to the parties once the ruling is ready.

(e) That it has come to our attention, after enquiry at the court registry on 20th January 2020, that the ruling was delivered on 9th October 2019, and no ruling notice was served upon the applicant or the other parties.

(f) The ruling of the court is aggrieves the applicant, and since time of filing a notice of appeal on the same has lapsed, it is in the interest of justice that this honourable court grants us leave to file an appeal out of time.

7. On the 26th May 2020, the court directed that the preliminary objection and the notice of motion be heard together. The same were canvassed by oral submissions on 28th July 2020.

8. Prayer 2 of the notice of motion seeks that the 3rd Interested Party/applicant be granted leave to file a notice of appeal out of time. Ground no 1 of the plaintiff's preliminary objection is that this court has no jurisdiction to extend time to file an appeal out of time.

9. Section 7 of the Appellate Jurisdiction Act provides that:-

“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;.....”

It is clear from the above provision that this court has jurisdiction to grant the orders sought in prayer 2 of the notice of motion. I therefore find the preliminary objection herein not to be merited and the same is dismissed.

10. The second issue for consideration is whether the notice of motion dated 7th February 2020 is merited.

11. It is the 3rd Interested Party's/Applicant's case that they were not served with the notice for the ruling. That they discovered on 20th January 2020 that the ruling had been delivered on 9th October 2019. That by then the time for filing a notice of appeal had lapsed.

12. I have gone through the court record. The ruling was scheduled to be delivered on 10th April 2019. On the said date the ruling was not delivered due to pressure of work.

13. As no party appeared on 10th April on 2019, the court was of the view that a notice would be sent to the parties informing them of the delivery of the ruling.

14. Indeed, vide a notice dated 3rd October 2019 parties were informed that the ruling would be delivered on 9th October 2019. There is an affidavit of service to the effect that M/S Mugambi Imanyara had been served with the notice of delivery of ruling. Indeed Mrs. Otieno for the 1st defendant attended court on the date of the ruling having been served in the same manner.

15. However, I note from the cause list of 9th October 2019 that this matter is not listed as coming up for ruling. This may have been an oversight on the part of the registry staff. For this reason, I give the 3rd interested party/applicant the benefit of doubt. It is also for this reason that I will allow the application on the interest of justice.

16. In conclusion, I find merit in this application and I grant the orders sought namely:-

(a) That leave is hereby granted to the 3rd interested party/applicant to file a notice of appeal out of time against the ruling dated 9th October 2019.

(b) That the notice of appeal and later to the Deputy Registrar be deemed to be duly filed upon payment of the requisite fees.

(c) That costs of this application be borne by the 3rd interested party/applicant.

It is so ordered.

Dated, signed and delivered in Nairobi on this 19th day of November 2020.

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance Interested Party

Phyllis - Court Assistant