



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC MISC CASE NO. 12 OF 2020

STANLEY MUKUMU M'MWAMBIA.....APPLICANT

VERSUS

DAVID MWENDA KARUTI.....RESPONDENT

JUDGMENT

1. Before me is a notice of motion brought pursuant to provisions of Section 79 G of the Civil Procedure Act and Order 42 Rule 6 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 Chief Magistrate in MAUA CMCC NO. 32 OF 2015. The applicant is also seeking a stay of execution of the aforementioned judgment pending the hearing and the determination of the appeal.

2. The applicant contends that Judgment of the lower court was delivered on 15.4.2020, when there was an outbreak of corona pandemic which distracted everything in the country. In particular, he avers that movement from one place to another was curtailed and the court's activities were affected. He states that the respondent is in the process of executing the judgment.

3. No response was filed in respect of the application despite the fact that service had been effected.

4. On the issue of extension of time, I hereby make reference to the provisions of **Section 79 (g) of the Civil Procedure Act** where it is stipulated as follows;

“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 of a copy of the decree or order:

5. In the case of **Fahim Yasin Twaha vs Timamy Issa Abdalla & 2 Others [2015] eKLR**, the court stated that.

“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”.

6. 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. If the judgment was delivered on 15.4.2020 as alleged by the applicant in the draft memorandum of appeal, then the 30 days right of appeal expired on 15.5.2020. The current application was filed on 20.7.2020. I find that the two months (or thereabout) delay has satisfactorily been explained by the applicant. I therefore find that the prayer to file an appeal out of time is merited.

7. On the issue of stay of execution, I find that the applicant undertook to avail a copy of the judgment through a further affidavit on 15.10.2020. By the time of writing this ruling, I had not seen the said document. Therefore, this court does not have sufficient material to enable the court make an informed determination regarding the issue of stay of execution. In the circumstances, I decline to allow the prayer for stay of execution.

Final orders

8. The applicant is hereby granted leave to file an appeal within 14 days from the date of delivery of this Judgment. Other prayers in the application are hereby denied.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF DECEMBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given via a notice dated 7.12.2020. 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 Judgment 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