



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC MISC CASE NO.E00 3 OF 2020

JANE MWIRARIA.....1ST APPLICANT

STELLA KANYATA MBAYA.....2ND APPLICANT

VERSUS

TERESA NAITORE MWANJA.....RESPONDENT

JUDGMENT

1. Before me is a notice of motion dated 21.9.2020, brought pursuant to provisions of Section 1A, 1B, 3A and 79 G of the Civil Procedure Act and Order 50 Rule 6 and 51 Rule 1 of the Civil Procedure Rules seeking leave to file an appeal out of time against the Judgement/Decree of the Senior Principal Magistrate Hon T. Mwangi delivered on 30.7.2020 in Meru CMCC NO. 104 OF 2018.

2. The applicants contend that the judgment was delivered in their absence. When they learnt about it, they applied for a typed copy of the judgment but the same was not supplied in good time. The applicants aver that the delay of about 24 days is not inordinate.

3. The respondent has opposed the application vide a replying affidavit sworn on 9.10.2020. She contends that the applicants are indolent, shrewd and untruthful and that they are out to mislead the court. She states that the advocate for the applicants was present when the judgment was delivered.

4. I have considered all the issues raised herein. **Section 79 (g) of the Civil Procedure Act** provides 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 held thus;

“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. I find that the applicants delayed in lodging the appeal with about 1 month. That delay is not inordinate. I am inclined to give them the benefits of doubts. I therefore allow the application on condition that the appeal is filed within 14 days from the date of delivery of this Judgment. The applicant is to bear the costs of this miscellaneous suit.

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