



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC APPEAL CASE NO. 06 OF 2020

THUNGUTHA NKARATU.....APPELLANT

VERSUS

TABITHA KANINI NKARATU.....RESPONDENT

RULING

1. This application states that it has been brought to court under section 3A, 63e, 75 and 95 of the Civil Procedure Act **AND** Order 43 Rule 2 of the Civil Procedure Rules.

2. The application seeks the following orders:

- 1) The Judgment herein was delivered on 25th February 2020 at Chuka Law Courts wherein the Court Granted a 30 day stay of execution.
- 2) That such period would Lapse during the prevailing Pandemic Covid-19 a time when the Courts had scaled down the service delivery in an effort to combat the pandemic.
- 3) That indeed as a result of the Pandemic, the applicant and his previous advocate lost touch as a break down in communication from the applicants side who is a vulnerable citizen aged 97 years.
- 4) That indeed efforts to get services of an advocate have also been an up hill task as most of there offices have been closed and the few that have been open were being manned by assistants thus hard to have my appeal filed in time.
- 5) That the respondent will not be prejudiced in any way if am allowed to pursue my appeal

3. The application is buttressed by the affidavit sworn by the applicant on 13th August, 2020 which states: -

I **THUNGUTHA NKARATU** a resident of CHUKA and P.O Box Number 165-60200 hereby make oath and state as follows:-

1. **THAT** I am the Applicant herein and fully conversant with the facts of this case and I am therefore competent to swear this Affidavit.
2. **THAT** I have since been made aware of the absurd fact my statutory period to file an appeal has since expired as the Judgement herein was delivered on 25TH February 2020 at Chuka Law Courts. (*Annexed and marked "TN 1" is a copy of the said Judgment*).
3. **THAT** I am deeply aggrieved and very dissatisfied with the said Judgment and thus wish to appeal against the same.
4. **THAT** I am informed by my advocates on record, which information I verily believe to be true, that the time allowed to appeal under the Act has since lapsed. Nonetheless, this Honourable Court has the discretion to extend such time.
5. **THAT** I verily believe that the delay occasioned herein is not so inordinate as to be inexcusable and I humbly request this Court to find as such.
6. **THAT** indeed I am vulnerable considering my advanced age 97 years and a soft spot for being a victim of the current pandemic thus my limited mobility on.

7. **THAT** no prejudice will be occasioned on respondent if am allowed to pursue my appeal albeit the same being brought out of time.

8. **THAT** I swear this affidavit in support of the Application filed herewith and pray that the same be allowed as prayed

9. **THAT** what is deponed to herein is true to the best of my knowledge, understanding and belief save where otherwise stated.

4. On 10/11/2020, advocate Mwitwi, holding brief for advocate Ashava for the appellant, told the court that the parties had agreed to canvass the 2 apposite applications by way of written submissions and asked that the applicant be given 7 days to file and exchange submissions **AND** the respondent be given 7 days after service by the applicant to file and exchange his submissions.

5. On 24th November, 2020, both advocates had not filed submissions. Of course, the respondent's advocate could not prepare his submissions unless he received the applicant's submissions.

6. Mr. Gitari h/b for Elias Mutuma for the applicant told the court that Mr. Mutuma did not intend to file submissions and asked the court to rely on filed pleadings only. Mr. Mutuma Kithinji, the respondent's advocate told the court that since the Appellant had disobeyed a court order, the appeal ought to be dismissed.

7. I find that, at the very least, the conduct of the applicant's advocate ended in delaying the adjudication of this matter. Such conduct is reprehensible and is justly deprecated by this court.

8. Order 79B of the Civil Procedure Act states as follows: -

“Before an appeal from a subordinate court to the High Court is heard, a Judge of the High Court shall peruse it and if he considers that there is no sufficient ground for interfering with the decree, part of the decree or order appealed against he may notwithstanding Section 79C reject the appeal summarily.”

9. I find no sufficient ground to interfere with the decision contained in the judgment of the lower court. I will, therefore, summarily reject this appeal.

10. Although rather inconsequential in view of my finding above, I opine that the Corona Pandemic excuse for the applicant's delay in filing his appeal is veritably unsatisfactory. This is because all court registries in Kenya had arrangements where urgent matters such as filing of appeals could be registered. The judgment having been delivered on 25th February, 2020 filing this application on 13th August, 2020 constitutes inordinate delay. This delay would not have persuaded this court to expand time for appeal or to grant the orders sought in the two applications which are both dated 13th August, 2020.

11. Having found that I find no ground for interfering with the decision of the lower court, I issue the following orders: -

a) This appeal is rejected summarily and as a result the two applications filed on 13th August, 2020 **AUTOMATICALLY** stand dismissed.

b) Costs shall follow the event and are awarded to the respondent.

Delivered in open Court at Chuka this 1st day of December, 2020 in the presence of;

CA: Ndegwa

Thungutha Nkaratu – Appellant.

P. M. NJOROGE,

JUDGE.