



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC MISC. APPLICATION. NO. 111 OF 2018**

**JOHN NJAU MBURU.....APPELLANT/APPLICANT**

**=VERSUS=**

**JOSEPH WANYORO KAMAU.....1ST RESPONDENT**

**ANN NUNA KIMURI.....2ND RESPONDENT**

**EMBAKASI RANCHING COMPANY LIMITED.....3RD RESPONDENT**

**RULING**

1. Before court for determination is a notice of motion dated 16/7/2018 through which John Njau Mburu (the applicant) seeks leave to lodge an appeal out of time against the ruling of Hon. E K Usui, Senior Principal Magistrate, rendered on 29/9/2017 in Nairobi Chief Magistrate Court Civil Case Number 4719 of 2010. The application also seeks temporary stay of execution. The application was filed on 16/7/2018, more than ten months after the impugned ruling was delivered. The proceedings of the trial court have not been attached to the application.
2. The application is supported by the applicant’s affidavit sworn on 16/7/2018 in which he deposed that he has a beneficial interest in the suit properties. He adds that there is a judgment in Nairobi CMCC 4719 of 2010. He learnt about the said suit after judgment had been rendered. He thereafter filed an application seeking to be enjoined in the suit and to set aside the judgment. The said application was dismissed in a ruling delivered on 29/9/2017 by Hon E K Usiu. He inadvertently failed to appeal against the said ruling due to his erstwhile advocate’s failure to advise him timeously on the way forward.
3. The application is opposed by the respondents through a replying affidavit sworn on 7/11/2018 by Joseph Wanyoro Kamau. He deposed that the applicant had not explained the reasons for the delay in preferring the appeal and the application.
4. At the hearing of the application Mr. Kibathi, counsel for the applicant, submitted that the impugned ruling was rendered on 29/9/2017. The applicant’s then advocate failed to take action and/or advise the applicant. He added that in the impugned decision, the Learned Magistrate declined to allow a review of the judgment of the subordinate court rendered on 19/12/2014. He added that the said judgment affects the applicant materially in that it directs the Chief Land Registrar to issue title in respect of the suit property.
5. I have considered the tenor and import of the application together with the materials placed before the court. The court is invited to exercise its discretionary jurisdiction to extend the time for lodging an appeal against a ruling rendered on 29/9/2017. The application was brought on 16/7/2018.
6. The principle which currently guides this court’s exercise of jurisdiction to extend time within which to file an appeal out of time is spelt out in Article 159 (2) (b) of the Constitution which provides thus:

**“In exercising judicial authority, the courts and tribunals shall be guided by the following principles:-**

- a. ....
- b. **Justice shall not be delayed.**

7. Echoing the above constitutional framework, the Supreme Court of Kenya in **Teachers Service Commission vs Simon P Kamau & 19 Others (2015) eKLR** reiterated the above position in the following words:-

**“67. Thus, the standpoint of the Constitution is that, delayed justice amounts to injustice and the courts, which are the dedicated mechanism for the delivery of justice, have an obligation to see to a steady pace of litigation, terminating within a**

**reasonable time- frame”.**

8. I have considered the history of this matter. The material judgment was rendered on 16/12/2014. It does appear from the impugned ruling that prior to bringing the application for review, the applicant filed an application for joinder in the suit as an interested party. That application was dismissed and the applicant did not appeal against it.

9. Secondly, the material delay is an inordinate one, particularly taking into account the fact that the applicant sought to challenge a judgment rendered in 2014. Equally significant is the fact that the only reason advanced to explain the delay is that the applicant’s advocate did not advise him timeously on the way forward. If this were to be casually accepted as an adequate explanation for a delay of this nature, litigation would never come to an end. The Court is therefore not satisfied that a proper explanation has been tendered to warrant the exercise of discretion in favour of the applicant. That being the position, the plea for stay of execution similarly fails.

10. The net result is that the notice of motion dated 16/7/2018 is declined for lack of merit. The respondents shall have costs of the application.

**DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JANUARY 2019.**

**B M EBOSO**

**JUDGE**

**DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2019.**

**E OBAGA**

**JUDGE**

**In the presence of:-**

June Nafula - Court clerk