



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 79 OF 2017

FORMERLY MERU ELC 60 OF 2013

OBADIAH PETER KAIRARIA.....PLAINTIFF

VERSUS

ANDERSON GITONGA JUSTACE1ST DEFENDANT

CECILIA CHURI SALESIO.....2ND DEFENDANT

RORLAND KIMATHI KANGA.....3RD DEFENDANT

RULING

1. This application is dated 24th January, 2019 and seeks orders:

1. That the instant application be certified urgent and the same be heard on priority basis.
2. That the court be pleased to extend time to the intended appellant to file and serve notice of appeal.
3. Costs of this application be provided for.

2. The application has the following grounds:-

- a) That judgment in this case was delivered on 13th December, 2018.
- b) That on 13th December, 2018 immediately after delivery of judgment the applicant applied for certified copies of judgment.
- c) That it was not until 15th January, 2019 that I was supplied with certified copies of the judgment.
- d) That I took time and sought advise from a counsel who read the judgment and advised that he had isolated several grounds of appeal.
- e) That after the advise from the counsel the applicants decided to file notice of appeal but unfortunately such notice of appeal is filed within 14 days of judgment.
- f) That the delay in filing the notice of appeal was not deliberate rather the applicant was not supplied with the judgment within a reasonable time.
- g) That the applicant strongly feel (sic) that he has a strong arguable appeal and this court should help him ventilate his issues by allowing him to file notice of appeal out of time.
- h) That section 7 of Cap 9 (the appellate jurisdiction act) give (sic) this court power to extend time to the applicant to file notice of appeal out of time.
- i) No party stand (sic) to suffer any prejudice in the event that the orders sort (sic) is granted.

Dated at Chuka this 24th day of January, 2019

3. The application is buttressed by the affidavit of Obadiah Peter Kairaria sworn on 24th January, 2019 which states as follows:

I, OBADIAH PETER KAIRARIA of P. O. Box 35 CHOGORIA in the Republic of Kenya make oath and state as follows:

1. That I am the applicant intended appellant herein well versed with the particulars of this suit hence competent to make this oath.
 2. That judgment in this case was delivered on 13th December, 2018.
 3. That on 13th December, 2018 immediately after delivery of judgment I applied for certified copies of judgment. (annexed and marked O.P.K 1 is a letter of application).
 4. That it was not until 15th January, 2019 that I was supplied with certified copies of judgment.
 5. That I sought advise from a counsel who read the judgment and advised that he had isolated several grounds of appeal.
 6. That after the advise from the counsel I decided to file notice of appeal but unfortunately such notice of appeal is filed within 14 days of judgment and therefore I was time barred.
 7. That the delay in filing the notice of appeal was not deliberate rather I was not supplied with the judgment within a reasonable time viz-a-vis (sic) the limited time for filing notice of appeal.
 8. That I strongly feel that I have a strong arguable appeal and this court should help me ventilate my issues by allowing me to file notice of appeal out of time.
 9. That section 7 of Cap 9 (the appellate jurisdiction act) give (sic) this court power to extend time to me to file notice of appeal out of time.
 10. That no party stand (sic) to suffer any prejudice in the event that the orders sort (sic) are granted.
 11. That all which is deponed herein is true to the best of my knowledge, belief and information.
4. When the application came up for hearing on 27th March, 2018, the applicant told the court that all what he wanted was to be allowed to file an appeal.
 5. I do note that the applicant's advocate applied for certified copies of the apposite judgment vide a letter dated 13th December, 2018 but which was filed on 10th January, 2019. Either the date in the letter is backdated or for whatever reason, it was filed almost a month after it was written. The court's record shows that the applicant was given a copy of the judgment on 15th January, 2015. This was only 5 days after the application to be supplied with a copy of the judgment was filed. Indeed, this application was filed almost a month after this court delivered its judgment on 13th December, 2018.
 6. The applicant is being economical with the truth when he seeks to ascribe his predicament to this court's delay in supplying him with a copy of the apposite judgment. In view of the fact that the applicant is not a truthful litigant, this court is not persuaded that it should exercise its judicial discretion to extend to him the time to file a Notice of Appeal.
 7. In the circumstances, this application is dismissed.
 8. I issue no order as to costs.

Delivered in open Court at Chuka this **27th day of March, 2019** in the presence of:

CA: Ndegwa

Obadiah Peter Kairaria - Applicant

P. M. NJOROGI

JUDGE.