



**REPUBLIC OF KENYA**

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

**CHUKA ELC MISCELLANEOUS APPLICATION CASE NO. 04 OF 2019**

**(Being an application to appeal out of time against the Ruling of the Learned Chief Magistrate Mr. J. M. Njoroge in his Ruling delivered on 24<sup>th</sup> April, 2019 and in respect of Chuka Chief Magistrate's Court L.D.T. Case NO. 1 of 2011)**

**MARGARET MUCHIRI.....APPLICANT**

**VERSUS**

**ELIPHAS NYAGA M'RIBU.....RESPONDENT**

**RULING**

1. This application is dated 12<sup>th</sup> June, 2019. It states that it has been brought to court Under Rules 4, 42 (1) and 43(1) (3) (a) (Court of Appeal Rules 2010) of Appellate Jurisdiction Act, Cap 9 Laws of Kenya as read with Section 65 (1) and 75 (1) of the Civil Procedure Act and Orders 43 Rules 1 (2), (3), 50 Rule 6 of the Civil Procedure Rules, Order 42 Rule 6 (1) of the Civil Procedure Rules, Article 159 2 (a), (b), (d) and (e) of the Kenya Constitution 2010, and all other enabling Provisions of the Law)

2. The application seeks the following orders:

1. That due to the nature and the urgency of the instant application, the same be heard ex-parte, save for inter-parte hearing.
2. That this honourable court be pleased to issue stay of execution orders against the Ruling delivered on 24<sup>th</sup> April, 2019 in Chuka CM L.D.T. Case No. 1 of 2011 and all consequential orders and/or decrees thereto, pending the hearing of the instant application inter-parte and/or until further orders from this honourable court.
3. That this honourable court be pleased to issue stay of execution orders against the Ruling delivered on 24<sup>th</sup> April, 2019 in Chuka CM L.D.T. Case No. 1 of 2011 and all consequential orders and/or decrees thereto, pending the hearing and final determination of the instant application.
4. That this honourable court be pleased to grant leave for the applicant to appeal out of time against the Ruling delivered on 24<sup>th</sup> April, 2019, and in respect of Chuka Chief Magistrate's Court L.D.T. Case No. 1 of 2011.
5. That the cost of this application be provided for.

3. The application has the following grounds:-

- a) That after the applicant was greatly aggrieved by the Ruling delivered on 24<sup>th</sup> April, 2019 and in respect of Chuka CM L.D.T Case NO. 1 of 2011, (sic) duly instructed M/s Waklaw Advocates to apply for certified copies of the Ruling for the purpose(s) of lodging an appeal.
- b) That M/s Waklaw Advocates applied for certified copies of the Ruling on 26<sup>th</sup> April, 2019 but the same was supplied on 4<sup>th</sup> June, 2019, and outside the statutory period allowed for lodging appeals.
- c) That Chuka Chief Magistrate Court in L.D.T. Case No. 1 of 2011 duly issued a certificate of delay on 11<sup>th</sup> June, 2019 in respect of the supply of the Ruling delivered on 24<sup>th</sup> April, 2019.
- d) That failure to lodge the appeal in time by the applicant was not deliberate and was occasioned by factors beyond the applicant's control.

- e) That it is in interest of justice that the applicant's application be allowed.
- f) That the applicant undertakes to expeditiously file and prosecute the intended appeal, if leave sought is granted.
- g) That the orders sought by the applicant would not prejudice the respondent in any event.

4. The application is supported by the applicant's affidavit sworn on 12<sup>th</sup> June, 2019 which states as follows:-

**I, MARGARET MUCHIRI of P. O. Box 91-6044 Chuka** make oath and state as follows:-

- 1. That I am the applicant herein, hence competent to make and swear this affidavit.
- 2. That the Ruling which has prompted me to file the instant application was delivered on 24<sup>th</sup> April, 2019. (Annexed find a copy of the said Ruling and marked "MM 1")
- 3. That being greatly aggrieved by the said Ruling delivered on 24<sup>th</sup> April, 2019 and in respect of Chuka Chief Magistrate's Court L.D.T. Case NO. 1 of 2011, I immediately instructed my present Advocates to apply for certified copies of the Ruling for the purpose(s) of lodging an appeal.
- 4. That M/s Waklaw advocates duly applied for certified copies of the Ruling on 26<sup>th</sup> April, 2019. (Annexed find a copy of the request letter and payment receipt and marked "MM 2 (a) and (b)" respectively).
- 5. That certified copy of the Ruling delivered on 24<sup>th</sup> April, 2019 was supplied to my advocates on 4<sup>th</sup> June, 2019 and outside the statutory period allowable for lodging appeals. (Annexed find a copy of certificate of delay and marked "MM3").
- 6. That I am not the author in the delay in supplying the certified copy of the ruling delivered on 24<sup>th</sup> April 2019 and as such I should not be condemned for not lodging my appeal in time.
- 7. That my intended appeal is highly meritorious as can be demonstrated on the draft memorandum of appeal marked "MM 4").
- 8. That it is in the interest of justice that my application be allowed and I undertake to expeditiously file and prosecute the intended appeal, if leave sought is granted.
- 9. That the respondent stands to suffer no loss and/or damages, if the orders sought are granted.
- 10. That the contents of my affidavit are true to the best of my knowledge, belief and information.

5. During ex-parte hearing, Mr. Kirimi Muturi, the applicant's advocate, told the court that he wished to rely on the grounds listed in the Notice of Motion and on the applicant's supporting affidavit.

6. At this exparte stage, I find it reasonable to grant conditional stay of execution. It is ordered as follows:

- a) The application is **NOT** certified urgent but will be heard on priority basis.
- b) Prayer 2 is granted conditionally and the applicant is directed to deposit as security the sum of Kshs.100,000/= within 14 days of today failing which the conditional stay granted herein will lapse.
- c) The application is to be properly served upon the respondent within 7 days of today.
- d) The application will be heard interpartes on 9<sup>th</sup> July, 2019**

Delivered in open Court at Chuka this **26<sup>th</sup> day of June, 2019** in the presence of:

CA: Ndegwa

Kirimi Muturi for the applicant

**P.M. NJOROGE**

**JUDGE**