



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC APPEAL NO. 3 OF 2018

FRANCIS K. TONU.....PLAINTIFF

-VERSUS-

JOSEPH TOIYA.....1ST DEFENDANT

TOWN COUNCIL OF NAROK.....2ND DEFENDANT

RULING

The Application before me is the Notice of Motion dated 21st January, 2019 brought under Section 1A,3A and Section 79G of the Civil Procedure Act, order 2 Rule 15 of the Civil Procedure Rules seeking for Orders that the Memorandum of Appeal filed by the Appellant dated 16th March, 2019 be struck out together with the Record of Appeal.

The Application was based on the grounds that the Appeal which arose from Narok SPMCC No. 138 of 2019 that the Appellant sought and was granted leave to Appeal out of time conditional to filing of the appeal within a period of 60 days.

The Appeal was filed out of time or over a period of 150 days and its continued existence is prejudicial to the 2nd Respondent as the same contravenes its constitutional right to a speedy trial. The Application was further supported by the affidavit of Elizabeth Sanangoi Lolchoki in which she averred that the appellant sought and was granted leave to Appeal out of time on condition that the Appeal be filed within a period of 60 days.

The Applicant further averred that notwithstanding the aforementioned conditional leave to appeal, the Respondent in clear disregard of the order of the court filed the Appeal by over 5 months which was beyond the terms set out by the court.

The Application was opposed by the Respondent by way of a Replying Affidavit sworn by Francis Tonui where he deponed that the ruling was deferred severally but eventually delivered on 21st July, 2017 and during the said ruling though in his favour he was not present in court nor his advocates and he thus applied for proceedings and he moved swiftly to file the Record of Appeal.

The Respondent further deponed that the record of appeal was filed on 7th March, 2018.

The Respondent further averred that if the application is allowed the same will deny it a fair hearing and trial.

I have read the application before me and the submissions filed by counsel for both parties and the issues for determination before me are:-

1. Whether the delay in the filing of the record of appeal was deliberate
2. Whether the memorandum of appeal and the record thereof be struck out

From the pleadings it is the applicant's contention that the Memorandum of Appeal was filed out of time frame granted by the court of 60 days and the Respondent even though accepting that yes indeed the appeal was filed late contends that he and his advocates were not aware of the court's ruling on the matter and it took the applicant about 150 days over and above that was given by the court.

I have considered the application before me and the submissions filed by both parties and it is not in dispute that the appellant had previously been granted conditional leave to file his appeal within 60 days in exercise of the court's discretion the applicants have not met the set timeline and conditions. The Applicants seeks for enlargement of time. It is now established justice must be rendered expeditiously and in

an efficient manner and being indolent the appellant can really blame himself as he was accorded time but he failed to utilize the same.

The Application before me is thus filed out of time and no sufficient grounds have been adduced for me to enlarge time and for the above reasons I allow the same and struck out the Respondents Memorandum of Appeal and the record of Appeal.

I award the costs to the 2nd Respondent.

DATED, SIGNED and DELIVERED in open court at NAROK on this 22nd day of July, 2019

Mohammed Kullow

Judge

22/7/19

In the presence of: -

Mr. Kiptoo for the 2nd Defendant

Mr. Ondari holding brief for Kiplenge for Plaintiff

CA:Kimiriny

Mohammed Kullow

Judge

22/7/19