



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU

ELC JR APPLICATION NO. 4 OF 2013

REPUBLIC.....APPLICANT

VERSUS

DISTRICT COMMISSIONER

IGEMBE SOUTH DISTRICT.....1ST RESPONDENT

IBRAHIM KIRAGARA MWAMBIA.....INTERESTED PARTY/ APPLICANT

JOSEPH NDUNGU NJUGUNA.....EX-PARTE APPLICANT

RULING

1. The interested party/applicant filed a Notice of motion dated 19th February 2019 pursuant to provisions of section 7 of the Appellate Jurisdiction Act, Order 51 Rules 1, 3 & 4 of the Civil Procedure Rules, 2010 and Articles 10, 25 (c) and 159 of the Constitution seeking for the extension of time within which to file a notice of appeal out of time and that costs of the application be in the intended appeal.

2. The application is based on the grounds on the face of it and in the supporting affidavit and supplementary affidavits of the applicant. He avers that Judgment was delivered against him but his former advocates did not inform him timeously. The interested party and his family have attached great economic and sentimental value in the suit land on which they have lived and developed.

3. The application was opposed by the Ex-parte Applicant (Joseph Ndungu Njuguna) via his replying affidavit dated 15th March 2019, where he avers that the dispute between the two parties has been litigated upon in various forums and that even an appeal cannot salvage the applicant's claim. Additionally, the ex-parte applicant avers that this application is an after-thought which is meant to delay his enjoyment of the judgment.

4. The Respondent (The Attorney General) has not opposed the application.

5. I have considered all the arguments raised herein as well as the rival submissions of the parties. I find that the issue for determination is **whether to grant an extension of time to file an appeal or not?**

6. Generally, a court has discretion to consider an application for extension of time to lodge an appeal, see- **Leo Sila Mutiso vs Rose Hellen Wangari Mwangi, Civil Application Nai. 251 of 1997** and the case of **Fahim Yasin Twaha vs. Timamy Issa Abdalla &2 Others (2015) eKLR.**

7. Turning to the matter at hand, I find that the applicant/ interested party has given a plausible explanation as to why he did not lodge an appeal in good time. This was because his previous advocate kept him in the dark. Further, I note that the ex-parte applicant has not demonstrated how he stands to be prejudiced if the application is allowed. After all, the applicant/ interested party has not sought for a stay of the Judgment/Decree herein. The fact that the dispute has been litigated upon in many forums is not a barrier to further litigation in the Court of Appeal.

8. In conclusion, I allow the application in the following terms;

I. The Applicant/Interested party is granted extension of time to file an appeal whereby he shall file and serve the memorandum of appeal within seven days of the date hereof failure to which this order of extension of time shall lapse.

II. The Applicant/Interested party shall bear the costs of this application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 9TH DAY OF OCTOBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Muriithi holding brief for C.P Mbaabu for Interested party

Mwangi holding brief for Gichunge for the exparte applicant

HON. LUCY. N. MBUGUA

ELC JUDGE