

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC CASE NO. 135 OF 2010

RICHARD MUREITHI GICHIMBA.....APPLICANT

VERSUS

PETER AKENG'O ADHOLA.....1ST RESPONDENT

(Suing as the Personal Representative of LEAH ATIENO ADHOLA

CITY COUNTY OF NAIROBI.....2ND RESPONDENT

RULING

The application dated 29/05/2019 seeks enlargement of time within which to lodge and file an appeal out of time. It was premised on grounds that when the ruling to be appealed against was delivered on 26/03/2019, neither the advocate for the Applicant nor the Applicant were aware and only got hold of the ruling on 22/05/2019, which was 30 days after the time to lodge an appeal had lapsed. It was also based on the ground that no prejudice will be occasioned to the Respondents should the application be allowed. The application was supported by the undated affidavit of Rita K. Kaloki, Advocate for the Applicant, filed on 31/05/2019, which the court has considered. The affidavit was served and responses to it filed.

In a nutshell, the deponent averred that the intended appeal has good chances of success; the application was made without inordinate delay; and that the record clearly shows that the ruling was scheduled to be delivered on 12/03/2019 but the court did not make any communication thus the Applicant and his Advocate were not aware that the ruling was to be delivered on 26/03/2019. She annexed a draft Notice of Appeal.

Mr. Owino Opiyo, counsel for the 1st Respondent swore a replying affidavit on 15/05/2019 in opposition to the application. He averred that the Applicant's advocates are not properly on record because they had not sought leave before recording a consent with the previous advocates. He added that this court lacks jurisdiction to extend time for filing an appeal since under Rule 4 of the Court of Appeal Rules, only the Court of Appeal has exclusive jurisdiction to grant the orders sought. He added that when the matter came up for ruling on 12th March 2019, the Applicant's counsel was present and the ruling was deferred to 26th March 2019 in the presence of all parties and that no convincing basis had been laid to warrant an extension of time.

The court has considered the application and the response. Looking at the totality of the facts in this case, the court is unable to agree with the Respondent that the Applicant is not deserving of the orders sought. The application was brought 30 days out of the time within which the Notice of Appeal should have been lodged. This can hardly be said to be inordinate under the circumstances.

The court record shows that that neither counsel for the Applicant nor the Applicant was present when the ruling was delivered and it cannot be said that it was not due to their fault. The ruling was slated for 12/03/2019 and it is not clear from the court record whether the Applicant was duly notified that the ruling would instead be delivered on 26/03/2019.

The application dated 29/05/2019 is merited and is therefore allowed.

Dated and delivered at Nairobi this 13th day of December 2019

K.BOR

JUDGE

In the presence of:-

Mr. W. Kabugu holding brief for A. Opiyo for the Plaintiff/1st Respondent

Mr. K. Munyori holding brief for Ms. K. Ilia for the 2nd Defendant/Applicant

Mr. V. Owuor - Court Assistant

No appearance for the 1st Defendant