



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 41 OF 2014

GRACE WAMBUKU KAMAUPLAINTIFF

VERSUS

BUSINESS SHADE LIMITEDDEFENDANT

CONSOLIDATED WITH

ELC NO. 46 OF 2014

PETER WANGAI MARAROPLAINTIFF

VERSUS

PETER WACHIRA KARIUKI1ST DEFENDANT

GRACE WAMBUGU KAMAU2ND DEFENDANT

DAVID WAMBUGU KAMAU3RD DEFENDANT

JOHN NICHOLUS GITHAKWA.....4TH DEFENDANT

CHARLES NGANA NDUNGU5TH DEFENDANT

RULING

(Application to lodge Notice of Appeal out of time; Section 7 Appellate Jurisdiction Act; application allowed).

1. The application before me is that dated 19 January 2018 filed by the plaintiff in the case Nakuru ELC No. 41 of 2014. The application is said to have been brought pursuant to the provisions of Order 51 Rule 1, Order 42 Rules 6(4) of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act. The principal order sought is for the applicant to be granted leave to file a Notice of Appeal out of time. The application is not opposed.

2. I have considered the application. I delivered judgment in this matter on 12 October 2017. The applicant has deposed that upon delivery of judgment, she instructed her erstwhile advocates to lodge an appeal but they failed to do so. She then appointed another firm of advocates to take up the matter and to

proceed with the intended appeal but the period for filing the Notice of Appeal has lapsed. It is for that reason that she has approached this court for extension of time.

3. I have considered the application. Although Order 51, Rule 1 and Order 42 Rule 6(4) have been cited, I do not see their place, given the nature of the application. Order 51 Rule 1 is a general provision that directs that applications be by way of Notice of Motion and Order 42 Rule 6(4)

merely provides that an appeal is deemed lodged for purposes of applying for stay, when a Notice of Appeal has been filed. It is important for counsel to be citing the correct provisions of the law so as to guide the court and avoid an embarrassing situation.

4. On my part, I think the matter is squarely addressed by Section 7 of the Appellate Jurisdiction Act, Cap 9, Laws of Kenya. The said law provides as follows :-

S. 9 The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired :

Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.

5. It will be seen from the above, that the High Court has jurisdiction to extend time for "*giving notice of intention to appeal...*". The notice of intention to appeal is the Notice of Appeal. The grant of leave is not automatic and I need to be satisfied that the applicant has tabled cogent reasons for not filing her Notice of Appeal in time.

6. The reason given is that her erstwhile advocates failed to file the Notice of Appeal despite being given instructions to do so. I will accept the reasons given, although to me, the lapse of time, from 12 October 2017, to the date that this application was filed, which is more than 2 months thereafter is extensive. However, since the application is not opposed, I will allow it and enlarge time for the filing of the Notice of Appeal by a further 14 days from today. I therefore order the applicant to file and serve the Notice of Appeal within 14 days from today.

7. None of the other parties opposed the application and given that position, I make no orders as to costs.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 14TH day of February 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mr. Kisilah holding brief for Mr Njau Kayai for the applicant.

No appearance for the respondents.

Court Assistant :Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU