

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT GARISSA

CIVIL APPEAL NO. 4 OF 2017

OSMAN ABDI IROBE.....APPELLANT

VERSUS

NADHIFA B. ABDISAMAD.....RESPONDENT

RULING

INTRODUCTION

This is the ruling arising from the Notice of Motion dated 16th February, 2018. In that Notice of Motion, the applicant is seeking leave to file record of Appeal out of time. From the grounds in support of the said application shown on the face of the said application, the appellant/applicant stated that he filed Memorandum of Appeal on 4th December, 2014 in Nairobi in Civil Appeal No. 31 of 2014. On 19th January, 2015, he filed an application for a temporary injunction pending the hearing and determination of the main appeal.

On 25th July, 2017, the Honourable Court pronounced itself on that application and directed the file to be transferred to Garissa High Court at the instance of the parties. In the supporting affidavit sworn by Stephen G. Wanyoike, counsel appearing for the appellant, he deponed that when he was finally informed that the file had been received in Garissa High Court he contacted his client for instructions on how to proceed with the matter. Mr. Stephen G. Wanyoike deposed that his client took time to come back to him thereby causing further delay in prosecuting this case. Mr. Wanyoike stated that the respondents will not be prejudiced if this application is allowed.

When the application came up for interparties hearing on 2/5/2018 and after satisfying the court that counsel for the respondent M/s Arthur Ingutya & Co. Advocates were duly served with the hearing notice, the case was allowed to proceed exparte.

I have considered the said application dated 16/2/2018 and the supporting affidavit. Section 79G of the CPA provides as follows;

“Every appeal from a subordinate court to the high court shall be filed within a period of thirty days from the date of the decree or order, appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

The appellant through his learned counsel has explained that the delay in filing the appeal was caused by filing the Memorandum of Appeal in the High Court at Nairobi as there was no Environment and Land Court at Garissa.

The Learned Counsel also explained that he filed an application for a temporary injunction which exacerbated further delay in the delivery of that ruling and the record of appeal.

In an application to file record of Appeal out of time, this court usually considers whether the delay to file the record is inordinate to cause prejudice to the opposite party and the administration of justice generally. The other consideration is whether the objective of ensuring expeditious proportionate and affordable resolution of the disputes will be achieved by allowing the application. Putting into consideration these factors, I am indeed satisfied that the delay in filing the record of appeal was not inordinate to cause an injustice to the opposite party who did not even file grounds of opposition or a replying affidavit in opposition thereto. I also find and hold that the overriding objective of a just and expeditious determination of the dispute between the parties will be enhanced rather than being delayed. In the upshot, I hereby allow the application dated 16th February, 2018 as prayed.

Read, delivered and signed in the open court this 24th day of May, 2018.

Hon. Justice E. C. Cheron

ELC JUDGE

In the presence of:

1. Mr. Wanyoike.

