



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 228 OF 2017

EMMY KAARI KABURU.....PLAINTIFF

VERSUS

PATRICK KAMUNDI ERASTO.....DEFENDANT

RULING

1. This application is dated 17th December, 2018 and seeks orders:

1. That the instant application be certified urgent and the same be heard on priority basis.
2. That the court be pleased to extent (sic) time to the intended appellant to file and serve a notice of appeal in the instant suit to the intended respondent.
3. Costs of this application be provided for.

2. The application is supported by the affidavit of Emmy Kaari Kaburu, the applicant and has the following grounds:

- a) That judgment in this case was delivered on 27th November, 2018.
- b) That on 27th November, 2018 in the absence of the applicant's counsel on record judgment was delivered.
- c) That the applicant's counsel on record the firm of M/S I. C. Mugo & Co. Advocates was not in court on the judgment day in that the was indisposed.
- d) That on 29th November, 2018 the applicant's counsel on record was admitted in Tenri hospital.
- e) That the applicant's counsel on record reported back to work on 10th December, 2018.
- f) That upon consulting the applicant's counsel on record upon return to office the applicant's counsel on record read and explained to me the general purport of the judgment of the court and the applicant felt aggrieved.
- g) That as of 10th December, 2018 fourteen mandatory days for filing notice of appeal had expired and the applicant could not file the notice of appeal out of time without leave of court.
- h) That the applicant then instructed her counsel to seek for leave of the court to file and serve notice of appeal out of time.
- i) That the applicant was late in filing notice by at least five days and further the delay was occasioned by the financial constrains of the applicant.
- j) That the applicant has moved with speed to seek for leave to file and serve notice of appeal out of time and the delay of five days cannot be said to be inordinate delay.
- k) That the applicant strongly feel (sic) there are arguable issues in the court of appeal consequently the court should (sic) leave to the applicant to file and serve notice of appeal out of time.
- l) That I (sic) is in the interest of justice that the applicant should be granted leave to file and serve notice of appeal outside the

stipulated period of fourteen days from the date of delivery of judgment.

m) That no party stands to suffer any prejudice in the event the orders sought are granted.

3. When this application was heard on **19th December, 2018**, Mr. Kirimi, holding brief for Mr. Mugo for the plaintiff/applicant, told the court that he relied on the apposite Notice of Motion and its supporting affidavit. He asked the court to grant prayer 2 in the application.

4. I do note that the applicant says that judgment was delivered when her advocate was not in court. When the date for directions to fix a date for delivery of judgment was given on 24th July, 2018 the applicant's advocate was in court. On 27th September, 2018, when the date for judgment was fixed, the applicant, Emily Kaari Kaburu was present in court.

5. I do note that the absence of the applicant's advocate in court on the day judgment was delivered is not a satisfactory basis for extension of time as prayed.

6. It seems that the applicant's advocate was admitted to hospital between **29th November, 2018** and **5th December, 2018**. Although this court commiserates with him concerning his health and wishes him a quick recovery to full health, this court notes that from **5th December, 2018** when he was discharged from hospital, there were 6 or so days remaining before 14 days had expired from the date judgment was delivered.

7. The applicant says that financial constraints was one of the reasons she could not file a Notice of Appeal. This reason does not satisfy the court that time extension as prayed can be granted. Obviously, it does not cost much for a Notice of Appeal to be filed.

8. Having considered the totality of the apposite pleadings and the oral submissions made in this matter, I am persuaded that this application lacks merit. Nevertheless, I opine that the greater interest of justice trumps the meritlessness of this application. For this reason, the applicant is allowed to file a notice of Appeal within two days of today and to ensure that the apposite appeal is filed within the prescribed period AND this court will not entertain any other application to extend time.

9. To facilitate timely filing of the intended appeal, it is hereby ordered that a copy of the Judgment delivered on **27th November, 2018** be availed to the applicant's advocate immediately after delivery of this ruling.

10. I issue no order as to costs.

11. It is so ordered.

Delivered in open Court at Chuka this 20th day of December, 2018 in the presence of:

CA: Ndegwa

I.C. Mugo present for the plaintiff/applicant

P. M. NJOROGE,

JUDGE