



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

MISC. APPL. NO. 94 OF 2014

JOLLY MUEMA KATHUKAAPPLICANT

VERSUS

FRANCIS NGAO DOMINIC.....1ST RESPONDENT

REUBEN SILA KITITU2ND RESPONDENT

RULING

1. The two Applications before me are dated 11th June, 2014 and 24th September, 2014.
2. In the Application dated 11th June, 2014, the Applicant is seeking for the following orders:
 - a. That the Applicant be granted leave to appeal out of time against the Judgment of the Senior Resident Magistrate I.M. Kahuya which was entered on 4th November, 2013 in SRMCC No. 159 of 2009 at Kangundo Law Courts.*
 - b. The costs of the Application be to the Respondent.*
3. The Application is predicated on the grounds that although Judgment was delivered by the lower court on 4th November, 2013, it was not until 28th January, 2014 that certified proceedings were ready; that the Applicant's advocate was not notified that the proceedings are ready and that the said advocate misplaced the copies of the proceedings and Judgment until 27th April, 2014 when they were found in a different file.
4. It is the Applicant's case that he became sick and that it was not possible for her to give instructions until 30th April, 2014.
5. In the Application dated 24th September, 2014, the Applicant is seeking for a stay of execution of the Judgment delivered on 4th November, 2013 in Kangundo SRMCC NO. 159 of 2009 pending the hearing and determination of the intended appeal.
6. The Application is premised on the grounds that the Applicant's property was proclaimed on 19th September, 2014; that the Applicant will suffer substantial loss and damage if the attachment proceeds and that he is ready to deposit any form of security as the court may direct.
7. In response to the Applications, the 1st Respondent deponed that the Applicant has not shown the justification for the inordinate delay in applying for a stay of execution of the Judgment; that the

Applicant has not been vigilant in pursuing the appeal and that the Applicant does not have an appeal with chances of success.

8. According to the Respondents, the filing of the Memorandum of Appeal does not need one to have a certified copy of the proceedings or Judgment.

9. The Applicant's and the Respondents' advocate filed their respective submissions and authorities which I have considered.

10. The Applicant is seeking for leave to appeal out of time against the Judgment of the Magistrate that was delivered on 4th November, 2013 in Kangundo SRMCC NO. 159 of 2009.

11. Although the said Judgment was delivered on 4th November, 2013, it was not until 11th June, 2014 that the current Application was filed.

12. According to the Applicant, the proceedings in the lower court were not ready for collection until 28th January, 2014 and that even after collecting the said proceedings, his advocate misplaced them.

13. I have gone through the annexures and I have not come across the letter by the Applicant's advocates requesting for proceedings.

14. Indeed, the Applicant's Affidavit does not state the reason as to why his advocate had to wait until the proceedings could be typed and certified before he could file a Memorandum of Appeal.

15. The explanations given for the failure to file a Memorandum of Appeal within thirty (30) days from the date of the delivery of the Judgment are not plausible at all.

16. Indeed, considering that the Applicant has admitted that even after the certified proceedings were obtained by his advocate, his advocate's clerk misplaced them thus delaying further in making the current Application, is an indication of a party who was not vigilant enough.

17. The Applicant has not even annexed a copy of the impugned Judgment on his Affidavit, thus leaving the court wondering what the appeal is all about.

18. In the absence of a plausible reason as to why the appeal was not filed within the requisite period, this court declines to extent time within which the Applicant can file her appeal.

19. Having declined to grant leave to the Appellant to file her appeal out of time, the Application for a stay of execution becomes moot.

20. For those reasons, I dismiss the Applications dated 11th June, 2014 and 24th September, 2014 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE