



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 272 OF 2017**

**FORMERLY NAKURU MISC. 6 OF 2014**

**FRANCIS K. TUNOI.....PLAINTIFF**

**-VERSUS-**

**JOSPEPH TAYA .....1<sup>ST</sup> DEFENDANT**

**TOWN COUNCIL OF NAROK.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Applicant herein has by way of Notice of Motion dated 4<sup>th</sup> January, 2013 under order 49 (5) section 3A, 65 and 79G of the Civil Procedure sought for leave of the court in filing an Appeal out of time.

The aforesaid Application was based on the grounds on the face of the Application inter alia that delay was occasioned by the Applicants previous advocates who neglected his instructions.

The Application was further supported by the Affidavit of the Applicant where he averred that being aggrieved by the decision in **NAROK SPMCC NO. 138 OF 2009** he instructed his advocate to lodge an Appeal that the said advocates failed to file as instructed.

The Applicant further avers that upon lapse of the statutory period he withdrew instructions from the said advocates and hence the delay in filing of the Appeal was not of his own making but that of his advocates and hence he should not be made to suffer for a mistake that is not of his own.

The Respondent opposed the said application by filing grounds of opposition dated 10<sup>th</sup> March, 2014 and a Supporting Affidavit. The Respondent contends that the Application is unmerited and an abuse of the court process. The Respondent further contends that Application has not advanced any credible reasons that will enable the court enlarge time and that there is no credible reason and/or proof to support the fact which previous advocates were instructed to file the Appeal and last there was inordinate delay in bringing the instant Application.

I have read the Application herein together with the Supporting Affidavit. I have also read the Respondents grounds of opposition and submissions filed on behalf of the 1<sup>st</sup> Defendant.

The issue for determination is whether there was a delay in the filing of the Appeal and if exceptional reasons exist for me to exercise my discretion.

I wish to point out that the application and the intended appeal relates to land which is a highly emotive

issue among the Kenyan communities. Disputes to ownership of land have at times disrupted good order in the society. The Applicant is blaming the delay on his instructions to his Advocates whereas no proof has been exhibited by him. I will give him the benefit of doubt in the interest of justice and the general overriding principle on the dispensation of substantive justice.

In view of the above I will allow the Applicant to file an Appeal out of time conditionally. Taking into account that this appeal has been pending in court since 2013. I grant applicant 60days within which to file the said Appeal. The cost of the application be in the cause.

It is so ordered.

**Dated, Signed and Delivered in open court at NAROK on this 21<sup>st</sup> day of July 2017**

**Mohammed Noor Kullow**

**Judge**

**21/7/17**

In the presence of:-

N/A for the parties

CA:Chuma