



**REPUBLIC OF KENYA**

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

**ELC MISC APPLICATION NO. 37 OF 2015**

EDWARD MUNENE MUGO.....APPLICANT

VERSUS

BONFACE MURIITHI MUTHONJIA.....1<sup>ST</sup> RESPONDENT

ELIUD GICHOBI MACHERE.....2<sup>ND</sup> RESPONDENT

SAMUEL KARIITHI RURUIGI

T/A QUICKLINE AUCTIONEERS.....3<sup>RD</sup> RESPONDENT

**RULING**

In **NICHOLAS KIPTOO arap KORIR SALAT VS I.E.B.C & OTHERS S.C APPLICATION No. 6 of 2014**, the Supreme Court laid down the following principles that should guide a Court in exercising its discretion to extend time within which to appeal:

- 1. Extension of time is not a right but an equitable remedy available only to a deserving party at the Court's discretion***
- 2. A party seeking such extension must satisfy the Court by laying the basis for the exercise of such discretion.***
- 3. Such discretion is to be exercised on a case to case basis.***
- 4. Where there is a delay, it should be explained to the satisfaction of the Court.***
- 5. The Court should consider the prejudice that may be caused to the other party.***
- 6. The application should be brought without undue delay.***
- 7. In certain cases, such as Election Petition, public interest should be a consideration for extending time.***

**Section 79G of the Civil Procedure Act** 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 has good and sufficient cause for not filing the appeal in time***". Emphasis added

The applicant **EDWARD MUNENE MUGO** has moved to this Court by his Notice of Motion dated 28th August 2015 and filed on 6th October 2015 citing **Sections 79G and 95 of the Civil Procedure Act** seeking the following orders:

- 1. That the Honourable Court be pleased to extend the time upon which to appeal against the ruling and/or orders of 28th August 2014 in BARICHO CIVIL CASE No. 7 of 2013.***
- 2. That the Honourable Court be pleased to give such other direction as it deems fit.***
- 3. That costs be provided for.***

The application is supported by the applicant's affidavit in which it is deponed, inter alia, that he was never a party in **BARICHO CIVIL SUIT No. 7 of 2013** and only came to be enjoined therein through a newspaper advertisement by **QUICKLINE AUCTIONEERS** to the effect that the land parcel subject of the suit was being sold and so he attended the auction, was declared the highest bidder and paid the sum of Ksh. 300,000. After the land had been transferred to him, he was served with a Notice of Motion dated 17th April 2014 which he responded to and later on 23rd January 2015, he was served with a bill of costs by the firm of **MAGEE WA MAGEE ADVOCATES** and so he sought the services of an advocate. It was then that he learnt that the land had been transferred to **BONFACE MURIITHI MUTHONJIA** who was also not a party to the original proceedings. That those orders aggrieved him and so he filed an application dated 12th February 2015 for leave to appeal out of time but it was dismissed. That he now wishes to be granted leave to appeal against the orders of 28th August 2014 out of time and strongly believes that he has a good appeal.

The application is opposed and in his replying affidavit, **BONFACE MURIITHI MUTHONJIA** describes it as frivolous, vexatious, incompetent and bad in law adding that he had filed suit against one **ROSE WANJIRU MUTUGI** in **BARICHO PMCC No. 44 of 2013** (formerly **EMBU HCCC No. 84 of 2011** and also formerly **KERUGOYA ELC No. 485 of 2013**) for specific performance and transfer of L.R MWERUA/BARICHO/1299 and a decree was issued in his favour after formal proof but when he lodged his documents, he found that there was a prohibitory order issued and so he filed an application for review on 16th August 2014. It was only after he had filed and served his bill of costs that the applicant filed an application to file appeal out of time which was dismissed on 9th July 2015. That the land was rightly awarded to him following due process and the applicant is only keen on keeping him away from enjoying the fruits of his judgment. That it is more than a year since the trial Court delivered its ruling on 28th August 2014 yet the applicant was present in Court but went to slumber only to file this application when costs were being assessed. He urged me to find the application devoid of merits and dismiss it.

Submissions to the application have been filed both by **IKAHU NGANGAH** advocate for the Applicant and **MAGEE WA MAGEE** advocate for the 1st respondent.

I have considered the application, the rival affidavits and submissions by counsel.

At the commencement of this ruling, I referred to the law and precedent that guides this Court in an application of this nature and it is clear that apart from being discretionary, the power to extend time will only be granted for ***"good and sufficient cause"***. When there is a delay, it should be satisfactorily explained. The ruling ought to be appealed was delivered on 28th August 2014 and this application was filed on 6th October 2015 (fourteen months later). No explanation has been offered for that delay which is clearly inordinate particularly bearing in mind that the applicant, as deponed in paragraph 15 of the replying affidavit, and which was not rebutted, was present in Court when the ruling was delivered. There is really no good and sufficient cause why I should exercise my discretion in favour of the applicant in the circumstances of this case.

The up-shot of the above is that the application dated 28th August 2015 and filed here on 6th October 2015 is devoid of merit. It is dismissed with costs to the 1st respondent.

**B.N. OLAO**

**JUDGE**

**29<sup>TH</sup> SEPTEMBER, 2017**

Ruling delivered, dated and signed in open Court this 29<sup>th</sup> day of September 2017

Ms Waweru for Mr. Magee for 1<sup>st</sup> Respondent present

Mr. Ngigi for Mr. Ngangah for Applicant present.

**B.N. OLAO**

**JUDGE**

**29<sup>TH</sup> SEPTEMBER, 2017**