



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 124 OF 2010

PATRICK KAKO KAKULUAPPLICANT

VERSUS

MWANGANGI KAKULU1ST RESPONDENT

MUNYWOKI NZOKA2ND RESPONDENT

RULING

1. What is before me is the Applicant's Application dated 6th March, 2017 in which the Applicant is seeking for the following orders:

a. That this Honourable Court be pleased to extent time within which to file and serve a notice of appeal and the notice of appeal dated 22nd February, 2017 and filed on 27th February, 2017 be deemed to be properly on record.

b. That the costs of this Application be provided for.

2. The Application is premised on the grounds that the Applicant's Appeal was dismissed on 27th January, 2017; that as at the time the Judgment was read, the Applicant was not in court and that the Judgment notice was never served on the Applicant.

3. The Applicant has deponed that he only came to learn about the Judgment much later and that his appeal has high chances of success.

4. Although the Respondents were served with the Application, they did not file any responses.

5. It is true that when the Judgment of this court was read on 27th January, 2017, neither the Applicant's nor the Respondents' advocates were in court.

6. According to the record, the court directed that the said Judgment was to be delivered on notice.

7. The Judgments and Rulings that were delivered by this court on 27th January, 2017 were more than thirty (30).

8. Consequently, the notice that was issued by the court was via the Law Society's website and the notice board. It is therefore possible that the said notice was not read by the parties herein.

9. The Appellant's counsel has submitted that pursuant to the provisions of Section 7 of the Appellate Jurisdiction Act, the High Court, and by extension this court, has jurisdiction to entertain and determine the application for extension of time within which to lodge a notice of appeal.

10. Counsel relied on the case of ***Kenya Airports Authority Vs. Timothy Nduvi Mutungi (2014) eKLR***, in which Githinji JA held as follows:

“The Application to extension of time for lodging a notice of appeal made in the High Court was competent and which the High Court should have determined ... As I have already observed, the High Court has jurisdiction by virtue of Section 7 of the Appellate Jurisdiction Act to entertain and determine the application for extension of time.”

11. Considering that the Applicant herein might not have been aware of the notice for the delivery of the Judgment of 27th January, 2017, and in view of the fact that the current application was filed two (2) months after the said Judgment, I find that the delay in lodging a Notice of Appeal is neither unreasonable nor inexcusable.

12. The Applicant has given a plausible explanation as to why he was unable to file the notice of appeal within the requisite time.

13. I therefore allow the Application dated 6th March, 2017 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE