

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ORIGINATING SUMMONS NO. 61 OF 2016

IN THE MATTER OF: ORIGINATING SUMMONS BY ASHA A. MIRAN AND MOHAMED A. MIRANI

AND

IN THE MATTER OF: THE WAKF OF ABDURAHMANN MIRAN

AND

IN THE MATTER OF: PLOT NUMBER 39 SECTION XXVIII M.I.

RULING

1. The notice of motion for determination is dated 3.3.2017 in which the applicant prays for orders:

1. Spent

2. This Honourable Court be pleased to grant the Applicant leave to file an Appeal out of time against Judgement of OMOLLO J. delivered on the 3rd of February 2017.

3. Any other order the Court may deem fit.

2. I have considered the grounds listed on the face of it explaining the reasons why the appeal was not filed on time. I have also read the replying affidavit opposing the grant of the orders sought. The Respondent deposed that the electricity problem was resolved in the high court section of the building in less than one month and that they got a copy of the judgement within 3 days of its delivery i.e. on 21.2.2017.

3. This Court as a policy usually supplies copies of its decisions immediately on delivery. It appears this was not done for this particular file because of the admitted fact that Mombasa had an incident with its electrical system round about the same time. The Respondent seemed to have been diligent in following up to be supplied with their copies unlike the Applicants. Be that as it may, filing an appeal is a right bestowed on all parties by the statute to enable them pursue their claim to the highest Court. In this instance where the appeal was not filed within the stipulated period, the applicant feels disadvantaged.

4. The power to extend time is discretionary. The fact that this application was not brought under certificate of urgency should not be used as a bar from being given an opportunity to pursue the appeal. The Respondent has not pleaded any prejudice they will suffer if the orders sought are granted. In any event they will also have an opportunity to defend themselves during the hearing of the appeal. Whether the family Court is the one vested with jurisdiction to determine the dispute or not is for the high Court to deal with.

5. I am thus satisfied that there is merit in the application and allow the request to file an appeal out of time. The applicant is granted 7 days from the date of this ruling to file the notice of appeal. The costs of this application abide the outcome of the intended appeal.

Dated, signed & delivered at Mombasa this 19th December 2017.

A. OMOLLO

JUDGE