



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC MISC APPLICATION NO. 10 OF 2015

MICHAEL E.G. MUHINDI APPLICANT

VERSUS

JOHN NGURE MUREKIO RESPONDENT

RULING

The applicant herein has moved this Court citing **Section 79(G) of the Civil Procedure Act** seeking leave to file an appeal out of time from the ruling and order of the learned Acting Senior Resident Magistrate Baricho Court dated 15th January 2015 in PM LDT Case No. 11 of 2008.

The same is grounded on the principal grounds set out on the face of the application and supported by the applicant's affidavit. From the application and the supporting affidavit, it is clear that the ruling subject of this application was delivered on 15th January 2015 and on 19th January 2015, the applicant's advocate applied for certified copies of the proceedings and judgment which were availed on 18th February 2015 and by then, the 30 days right of appeal given by the magistrate had expired.

The application is opposed and in his replying affidavit, the respondent has deponed, inter alia, that the delay is in-ordinate and that in any case, there is no right of appeal against the ruling dated 15th January 2015 and there is, further, no arguable appeal and therefore, this application lacks merit and ought to be dismissed with costs.

I have considered the application, the rival affidavits and the oral submissions by both Mr. Muchira for the applicant and the respondent who was in person.

Section 79(G) of the Civil Procedure Act allows for the filing of an appeal out of time so long as the applicant can demonstrate that he has a "***good and sufficient cause for not filing the appeal in time***". The respondent has argued that there is no arguable appeal with chances of success. However, it is clear from the provisions of **Section 79(G) of the Civil Procedure Act** that the merits or otherwise of the appeal is not a consideration. All that an applicant needs to show is that he has a good and sufficient cause for not filing the appeal in time. In exercising my discretion therefore, I need to consider two key issues and those are:-

- ***The nature of the delay***
- ***The reasons for the same***

Is the delay in-ordinate? The ruling sought to be appealed was delivered on 15th January 2015 and the applicant instructed his advocate who on 19th January 2015 applied for copies of proceedings and judgment. The letter seeking the same is actually dated 14th January 2015 (**annexture MEGM 2**) but

that must be a typing error because his advocate could not be requesting to be provided with copies of the judgment before it was delivered. I will therefore be guided by the applicant's supporting affidavit that infact the proceedings and judgment were applied for on 19th January 2015. The same were eventually supplied on 18th February 2015 and there is a certificate of delay signed by the Principal Magistrate Baricho that the time taken to prepare and supply the proceedings was from 19th January 2015 to 18th February 2015 (**annexture MEGM 3**). The order sought to be appealed was finally extracted on 28th February 2015 and this application was filed on 2nd March 2015. The delay is clearly not in-ordinate.

The delay has also been explained. The applicant moved with haste by instructing his advocate within four (4) days of the delivery of the ruling sought to be appealed. The trial Court has availed a certificate of delay explaining that it took 31 days to prepare and supply the certified copies of the proceedings and ruling. The applicant has satisfactorily explained the delay which was infact caused by the Court and for which he cannot bear responsibility. In my view, the applicant has shown ***“good and sufficient cause for not filing the appeal in time”*** as required by ***Section 79(G) of the Civil Procedure Act.***

In the circumstances, I find merit in the applicant's Notice of Motion dated and filed herein on 2nd March 2015. The appeal be filed within 15 days of delivery of this ruling. Costs in the cause.

B.N. OLAO

JUDGE

21ST APRIL, 2015

21/4/2015

Before

B.N. Olao – Judge

Gichia – CC

Applicant – present

Respondent – absent

COURT: Ruling delivered this 21st April, 2015 in open Court.

Applicant present

Respondent absent.