



REPUBLIC OF KENYA



KENYA LAW
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Muthama & another v Curzon (a.k.a Paul Ludevit Vaclav Curzon) (Civil Application E213 of 2022) [2022] KECA 1004 (KLR) (23 September 2022) (Ruling)

Neutral citation: [2022] KECA 1004 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E213 OF 2022
DK MUSINGA, JA
SEPTEMBER 23, 2022**

BETWEEN

MARTIN NGAO MUTHAMA 1ST APPLICANT

STEPHEN KIRIANKI NKANYAANA 2ND APPLICANT

AND

PAUL CURZON (A.K.A PAUL LUDEVIT VACLAV CURZON) RESPONDENT

(Being an application for extension of time to lodge and serve a Notice of Appeal out of time against the Judgment of the Environment and Land Court of Kenya at Nairobi (S. Okong'o, J.) dated 16th November 2021 in E.L.C. Suit No. 993 of 2016.)

RULING

1. The applicants' application dated 22nd June 2022 seeks leave to file an appeal out of time. In the applicants' affidavit in support of the application the 1st applicant states, inter alia, that the respondent instituted a suit against them in the Environment and Land Court sometime in 2016 seeking among other orders, cancellation of transfer of a parcel of land known as LR 209/3163 (the suit property), vacant possession of the suit property and compensation for unlawful demolition of a house.
2. On 16th November 2021 the trial court entered judgment against the applicants but the applicants allege that they did not know about its delivery until April 2022. They instructed Mr. Osundwa Advocate to institute an appeal but he did not do so, and now they fear the respondent may execute the judgment. The applicants believe that their intended appeal has high chances of success and urge this Court not to punish them for their former advocate's mistake.
3. The respondent opposed the application through a replying affidavit sworn by his advocate, Mr. Aldrin Ojiambo, who deponed, inter alia, that the impugned judgment was delivered on 16th November 2021 in the presence of Ms. Shenda Advocate, who held brief for Mr. Osundwa; that on the same



day the applicants' advocate applied for certified copies of the proceedings and the judgment; that the applicants also lodged a notice of appeal and served it upon the respondent's advocates; that subsequently certified copies of the proceedings and judgment were availed to the parties; that due to lack of instructions the applicants' advocate filed an application to withdraw from acting for the applicants; and that the intended appeal is not arguable. He therefore urged the court to dismiss the application.

4. The principles that guide this Court in considering an application of this nature are well stated. See *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi* [1999] 2 EA 231.
5. The delay in filing the application is inordinate and has not been explained with candidness. The applicants lodged a notice of appeal on 30th November 2021 but purport to have had no knowledge of delivery of the judgment until April 2022! They even sought and obtained certified copies of the proceedings and judgment but their advocate ceased from acting for them due to lack of instructions.
6. In *Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet* [2018] eKLR, the Court held that "a plausible satisfactory explanation for delay is the key that unlocks the Court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable."
7. In the circumstances, I am unable to exercise my discretion in favour of the applicants, whose application is premised on unmitigated false depositions. The application is dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2022.

D. K. MUSINGA, (P)

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

