



IN THE COURT OF APPEAL

AT NYERI

(CORAM: GATEMBU, JA (IN CHAMBERS))

CIVIL APPLICATION NO. 100 OF 2018

BETWEEN

JEDIEL MWIRIGI M'INOTI.....APPLICANT

AND

LUCIA KABURA FRANCIS.....RESPONDENT

(Being an application for extension of time to lodge notice of appeal and record of appeal out of time against an intended appeal from the Ruling of the High Court of Kenya at Meru (Gikonyo, J.) delivered on 28th May, 2018 in High Court Succession No. 117 of 2015)

RULING

1. Being aggrieved and desiring to appeal against the judgment of the High Court at Meru (***Gikonyo, J.***) delivered on 28th May 2018, the applicant, Jediel Mwirigi M'Inoti, has by a notice of motion dated 7th August 2018 filed through the firm of C.M. Kingori Advocates applied under Rule 4 of the Court of Appeal Rules for an order for extension of time within which to file and serve a notice of appeal as well as a record of appeal.
2. He has explained in his supporting affidavit that the advocate who represented him at the time, one Ms. Muthoni Advocate, did not communicate to him that the judgment had been delivered on 28th May 2018; that he only became aware of the judgment "*sometime in July 2018*" whereupon he took matters into his own hands and applied for proceedings before thereafter instructing the advocates now on record who promptly filed the present application of 8th August 2018.
3. He complains that he intends to challenge the judgment of the High Court on grounds that it was prematurely delivered when two applications that had been directed to be heard in an earlier ruling given on 25th July 2017 had not been heard.
4. In ***Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014[2014] eKLR*** the Supreme Court of Kenya pronounced that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; that extension of time is a consideration on a case to case basis; and that delay should be explained to the satisfaction of the court.
5. The Supreme Court stated further that whether there will be prejudice suffered by the respondents if the extension is granted and whether the application is brought without undue delay are also matters for consideration as is public interest.
6. Keeping those principles in mind, I am satisfied that the applicant has made out a case for the exercise of the Court's discretion in his favour. He has demonstrated that he immediately moved to apply for proceedings and judgment when he became aware of the judgment; there was no delay in presenting the present application; and the intended appeal does not appear to be frivolous.
7. I accordingly allow the application as prayed in prayer 1 and order that the time for filing and serving the notice of appeal and the record of appeal is hereby enlarged. If the same has not already been filed and served, I order the same to be filed and served within 30 days from the date of delivery of this ruling.

Costs of the application shall be in the appeal.

Dated and delivered at Nairobi this 5th day of February, 2021.

S. GATEMBU KAIRU, FCIArb

.....

JUDGE OF APPEAL

I certify that this is a true

copy of original.

Signed

DEPUTY REGISTRAR