



IN THE COURT OF APPEAL

AT NYERI

(CORAM: GATEMBU, JA (IN CHAMBERS))

CIVIL APPLICATION NO. 102 OF 2018

BETWEEN

NELIA NJERI KANGANGI.....APPLICANT

AND

STEPHEN GICHANGI KANGANGI.....RESPONDENT

(Being an application for extension of time to file a notice of appeal out of time,

against the judgment of the Environment and Land Court at Kerugoya delivered on 7th May 2018)

RULING

1. In support of her application under Rule 4 of the Court of Appeal Rules for extension of time to file a notice of appeal out of time, the applicant Nelia Njeri Kangangi, through her advocates C. M. Kingori Advocate, states that the judgment of the Environment and Land Court given on 7th May 2018, was delivered without notice to her or her advocates; that delivery of the judgment was initially reserved for delivery on 13th April 2018; that by a letter addressed to the advocates for both parties dated 16th March 2018, the Deputy Registrar of the court at Kerugoya communicated that the presiding Judge Kerugoya, the Hon. Mr. Justice Olao who heard the matter was on transfer to Bungoma High Court and that in the circumstances, “*the judgment shall be delivered on notice*”; that no notice was thereafter given to the applicant’s advocates and it was not until the applicant visited the registry of the court at Kerugoya on 7th August 2018 that she learnt that the judgment had been delivered on 7th May 2018 whereupon she instructed her advocates who promptly filed the present application on 16th August 2018.

2. Through the respondent’s replying affidavit and written submissions through the firm of A.N. Chomba & Co Advocates, the application for extension of time is opposed on grounds that it is an afterthought; that the application was made four months after delivery of the judgment without good explanation; that the applicant who is a step mother to the respondent has been trying in vain to evict the respondent from the suit property; and that the respondent stands to suffer prejudice if the application is allowed.

3. As the Supreme Court of Kenya stated in ***Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014[2014] eKLR*** 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; the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; extension of time is a consideration on a case to case basis; and delay should be explained to the satisfaction of the court. That Court stated further that whether there will be prejudice suffered by the respondents if the extension is granted; whether the application is brought without undue delay; and public interest are also relevant considerations.

4. In the present case, the applicant has explained that the date initially scheduled for delivery of the judgment was vacated by the court on account of the judge being transferred; that although the deputy registrar of the court had indicated that notice of the re-scheduled date for delivery would be communicated, that does not appear to have been done. The applicant has stated that she made inquiry at the registry on 7th August 2018 and on learning that judgment had been delivered moved quickly and had the present application filed on 16th August 2018.

5. I am satisfied that this is a proper case for the Court to exercise its discretion in favour of the applicant. The application dated 16th August 2018 is allowed in terms of prayer 1 thereof. The applicant shall file and serve the notice of appeal and the record of appeal within 30 days from the date of delivery of this ruling.

6. Costs of the application shall be costs 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