



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OKWENGU, JA (IN CHAMBERS))

CIVIL APPLICATION NO. E270 OF 2020

BETWEEN

THE WATER RESOURCES AUTHORITY (WRA).....APPLICANT

AND

SUPERIOR HOMES (KENYA) PLC.....RESPONDENT

INTERESTED PARTIES

- 1. GEMS MANAGEMENT LIMITED**
- 2. MICHAEL ANTHONY NYABUTI**
- 3. ROSALIND KATUMBI KOTI**
- 4. NANCY NTHAMBI KATINGIMA**
- 5. JAMES MAINGI MBITHI & EMMA MBINYA MUTIO**
- 6. DANIEL GICHUKI KARIUKI & EMILY NJERI KAROKI**
- 7. FAITH WANGUI THIONGO & ALLAN NJUGI MURIMI**
- 8. STELLA BONARERI MOGERE & KEPHA NYAMONGO OENGA**
- 9. ANTHONY MAGANDA CHACHA & RUTH MUTHONI NJIHIA**

(Being an application for enlargement and/or extension of time to file and serve a record of appeal out of time from the Judgment and Decree of the Environment and Land Court at Machakos (O. Angote, J) delivered on 8th November, 2019.

in

Machakos ELC No. 12 of 2018)

Consolidated with

JR Misc. Application No. 192 of 2018)

RULING

1. By a notice of motion dated 11th September 2020, the applicant has moved this Court under section 3A and 3B of the Appellate Jurisdiction Act and Rule 4 of the Court of Appeal Rules, seeking to have time extended to enable it serve its record of appeal dated 24th August, 2020, that it had filed on 31st August, 202

2. The applicant had filed a notice of appeal on 20th November, 2019 against the judgment of the Environment and Land Court (ELC) (**Angote, J**), delivered on 8th November, 2019. In an affidavit sworn by its advocate **Bernard Busiku Chenge**, the advocate explains that he applied for copies of typed proceedings and judgment on 20th November, 2019, and the same were delivered to him on 5th March, 2020, but the decree and certificate of delay was only issued to him on 4th August, 2020. The advocate deposes that the delay was partly due to the closing down of the court as a result of the Covid-19 pandemic, and later confusion arising from his letter which was addressed to the court, having been misplaced. He explains that the applicant's intended appeal is arguable and raises matters of public interest.

3. The respondent did not file any replying affidavit but responded to the motion through written submissions that were duly filed by his advocate. The respondent objects to the applicant's motion on the ground that it (the respondent) has already filed **Civil Appeal No. E330 of 2020** against the same judgment, i.e. judgment of **Angote, J**, dated 8th November 2019, and that the applicant has filed a cross-appeal in Civil Appeal No. E330 of 2020. The respondent therefore urges that it is unnecessary to allow the applicant's motion as the issue intended to be raised in the applicant's appeal can be raised in its cross-appeal. This will avoid having two parallel appeals on the same judgment.

4. The applicant has also filed written submissions in which it cites **Leo Sila Mutiso v Hellen Wangari Mwangi, Civil Application No. NAI 255 of 1997 (ur)**, and urges the Court to grant its application. The applicant maintains that the respondent shall not suffer any prejudice as it has already filed **Civil Appeal No. E330 of 2020** in which it raises the issue of its claim for special damages which was dismissed.

5. I have considered the application, the affidavit in support and the submissions filed by both parties. While the respondent has not disputed the circumstances upon which the applicant relies to have time extended to enable it file record of appeal, the respondent is of the view that the applicant's appeal is unnecessary in view of Civil Appeal No. E330 of 2020 in which the applicant has already filed a cross-appeal.

6. I agree with the respondent that in view of the fact that there is already an appeal against the judgment, subject of the applicant's intended appeal in which the applicant has already filed a cross-appeal, it is unnecessary to extend time to file the record of appeal as the applicant is at liberty to raise the issues it intends to raise in the cross-appeal, which he has already filed. Extending time for him would only result in duplication. For this reason, I find that it would not be expedient to exercise my discretion in the applicant's favour. Accordingly, the applicant's motion is dismissed. I make no orders as to costs.

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

HANNAH OKWENGU

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR