



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: KANTAI, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. 74 OF 2020

BETWEEN

THOMAS OGEMBO.....APPLICANT

AND

SAMUEL BOSIRE ANGWENYI.....1ST RESPONDENT

KEROKA RIVERSIDE SELF HELP GROUP.....2ND RESPONDENT

MAGRET NYANGAU.....3RD RESPONDENT

(Being an application to appeal out of time against the ruling of the

Environment and Land Court at Kisii (A.K. Ndung'u, J.)

delivered on 22nd November, 2019

in

ELC No. 942 of 2016)

RULING

I am asked in the Motion said to be brought “...under Section 79G of the Civil Procedure Act and all other enabling provisions of the law”, in the main, to grant leave to the applicant to file an appeal out of time against the ruling in **Kisii ELC No. 942 of 2016** delivered on 22nd November, 2019. In grounds in support of the Motion and in a supporting affidavit of the applicant, **Thomas Ogembo**, it is stated amongst other things that the applicant is dissatisfied with the said ruling and intends to appeal; that the intended appeal is not frivolous but is arguable; that ruling was delivered in the absence of both parties.

M/S Anassi Momanyi & Company Advocates for the appellant, and **M/S Angu Kitigin & Company Advocates** for the respondent, filed a letter dated 12th August, 2020 signed by both firms stating in essence that both sides wished to rely on written submissions. At the time of dealing with the file I have not received written submissions by the applicant and I have confirmed from our Registry in Kisumu that the applicant did not file written submissions despite being asked to do so through Hearing Notice sent on 20th February, 2021 by our Deputy Registrar, Kisumu.

The respondents did not also file written submissions despite notice from Deputy Registrar.

The principles that govern an application of this nature were well captured in the oft-cited case of **Leo Sila Mutiso v Rose Hellen Wangari Mwangi [1997] 2 EA 233** as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of the delay secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the

application is granted and fourthly, the degree of prejudice to the respondent if the application is granted".

In the Motion before me I have not been told why steps necessary for filing an appeal were not taken. The applicant does not disclose when he knew about the ruling only stating that the same was delivered in absence of both parties. The applicant has also not given me any material for me to establish whether the intended appeal is arguable. In those circumstances I am unable to exercise my discretion in favour of the applicant and the Motion fails and is dismissed. In the circumstances where I don't have submissions by either side I will not award costs to either side.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.

S. ole KANTAI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR