



IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLICATION NO. 167 OF 2020

(CORAM: OKWENGU, JA (IN CHAMBERS))

BETWEEN

JOYCE NJERI KARIUKI

(Suing as the Administrator of the estate of

JOSEPH KARIUKI JOSEPHAT MARIMA (Deceased).....APPLICANT

AND

JORETH LIMITED.....1ST RESPONDENT

LIVINGSTONE GITONGA MUCHUNGI.....2ND RESPONDENT

JAMES MUSAU KIMEU.....3RD RESPONDENT

CHARLES KAMARI.....4TH RESPONDENT

(Being an application for extension of time within which to file a notice

and a record of appeal, from the Judgment and Orders of the Environment

and Land Court at Nairobi-Milimani (Eboso, J.) delivered on 2nd June, 2020 in ELC No. 622 of 2012)

RULING

[1] The applicant has moved this Court under Rule 4 of the Court of Appeal Rules for extension of time to enable her file a notice of appeal and a record of appeal from the judgment and order of the Environment and Land Court (ELC) (**Eboso, J**) delivered on 2nd June, 2020.

[2] The application is supported by grounds stated on the face of the motion and an affidavit sworn by the applicant. In short, the applicant filed an originating summons seeking a declaration that the estate of **Josephat Kariuki Marima** (deceased) had acquired title to land parcel No. LR. 13330/542 by way of adverse possession. The matter was heard and was due for delivery of judgment on 2nd June, 2020. However, by that time, due to the Covid-19 pandemic the courts were delivering judgments online, and the applicant was not able to join the online forum because the matter was not listed on the cause list, nor did her advocate receive a link for the online platform.

[3] The applicant only learnt that judgment had been delivered and her suit dismissed when the 4th respondent and other persons visited the suit premises on 18th June, 2020. The applicant therefore applied for certified copies of the proceedings and judgment and also lodged her application dated 24th June, 2020 for extension of time.

[4] The applicant pleads that she needs to pursue the appeal as the deceased's estate will suffer grave prejudice as it stands to lose a property worthy over Kshs. 30 million. She also contends that she has an arguable appeal that has good chances of success.

[5] In a replying affidavit sworn by the 3rd respondent, **James Musau Kimeu**, on his own behalf and on behalf of the 2nd and 4th respondents, the respondents object to the applicant's motion maintaining that no good reason has been given for the failure to file her appeal

in time and that the deceased's estate will not suffer any prejudice as the suit property was not registered in the deceased's name.

[6] Both the applicant and the respondents filed written submissions upon which the application is to be determined. For the applicant, it was submitted *inter alia*, that the applicant had given a good explanation for the delay and the Court should therefore exercise its discretion in her favour. The applicant pleaded that the intended appeal is arguable and identified several grounds she intends to canvass. The applicant also maintained that the deceased purchased the suit property from Thome Farmers No. 5 Limited and was always in possession of the suit property in the 1970's until 1995 when he gave the suit property to his daughter and son in law to use, but the property remained part of his estate. The Court was urged that the estate will suffer prejudice if the orders sought are not granted.

[7] I have considered this motion, the affidavit in support and in reply and the rival submissions filed by the parties. It is trite that this Court has discretion to extend time but that the discretion must be exercised judicially. It has also been said time and again that the reason for the delay, the length of the delay, the degree of prejudice to be suffered by the respondent and the possible chances of the intended appeal succeeding, are all relevant factors in the exercise of such discretion. (See **Thuita Mwangi v Kenya Airways Limited [2003] eKLR; Leo Sila Mutiso v Rose Hellen Wangari Mwangi (Civil Application No. NAI 255 of 1997)**).

[8] The applicant has explained that the delay arose because of confusion arising from the delivery of judgment through the online platform and her advocate having failed to receive the link to the online platform. The Covid-19 pandemic has drastically affected the operations of the court system. The adoption of technology in discharging some of the court functions has in many cases resulted in technological challenges and confusion. The explanation given by the applicant is therefore plausible. Moreover, judgment having been delivered on 2nd June, 2020, the applicant had up to 16th June, 2020 to file the notice of appeal. The applicant made her application on 24th June, 2020 which was 8 days later. The delay was not therefore inordinate. In the circumstances, I find that this is an appropriate case in which I should exercise my discretion in the applicant's favour.

[9] Accordingly, I allow the applicant's notice of motion dated 24th June 2020 and extend time to enable her file and serve the notice of appeal within 7 days from today. Costs shall be in the appeal.

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

HANNAH OKWENGU

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR