



Revelation Mission Centre v African Church of the Holy Spirit (Civil Application E046 of 2021) [2021] KECA 331 (KLR) (17 December 2021) (Ruling)

Neutral citation: [2021] KECA 331 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E046 OF 2021
DK MUSINGA, JA
DECEMBER 17, 2021**

BETWEEN

REVELATION MISSION CENTRE APPLICANT

AND

AFRICAN CHURCH OF THE HOLY SPIRIT RESPONDENT

RULING

1. By a Notice of Motion dated 4th June, 2021, the applicant seeks extension of time to file an appeal against the judgment of Njoroge, J. that was delivered on 17th March, 2021 in Chuka ELC Appeal No. 2 of 2020. In an affidavit sworn by John Njeru Joel, the Reverend incharge of the applicant in support of the application, the applicant stated that following delivery of the impugned judgment, the applicant notified its advocates, I.C Mugo and Company, that it was dissatisfied with the judgment and instructed the advocates to lodge a notice of appeal. However, the advocates did not do so within the stipulated period of 14 days.
2. On 1st April, 2021, the applicant instructed the firm of Victor L. Adande & Co. Advocates to file the appeal but by that time the statutory period of lodging the notice of appeal had already lapsed. The newly instructed advocate proceeded to apply for copies of the proceedings and judgment.
3. The applicant believes that the intended appeal raises weighty issues of law as disclosed in a draft memorandum of appeal that is annexed to its affidavit.
4. Lastly, the applicant states that the respondent would not be prejudiced by grant of orders sought.
5. The application was opposed vide affidavit sworn by Gilbert Miriti M'rewa, one of the respondent's registered trustees. the respondent stated that no good reasons had been advanced by the applicant for the delay in lodging the notice of appeal and filing the appeal; that the trial Court's decree has been fully implemented; that the respondent is in exclusive occupation of the disputed parcels of land and



therefore the intended appeal has no prospects of success; and that it will be prejudiced if the orders sought are granted.

6. The application was disposed of by way of submissions which I have perused alongside the affidavits filed by the parties.
7. In an application for extension of time under rule 4 of this Court's Rules, the Court considers, inter alia the length of the delay; the reasons for the delay; possibly the chances of success of the intended appeal and the degree of prejudice that may be occasioned to the respondent if the orders sought are granted see *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi [1999] 2EA 231*.
8. The impugned judgment was delivered on 17th march, 2021 and immediately thereafter the applicant instructed I.C Mugo & Co. Advocates to appeal against same. However, I.C Mugo & Co. Advocates did not act promptly and on 1st April, 2021 the applicant instructed Victor L. Adande & Co Advocates to act in place of I.C Mugo & Co. Advocates. On 1st April, 2021, the applicant's new advocates applied for certified copies of proceedings and judgment. Shortly after the proceedings and judgment were supplied, the applicant's advocates lodged this application.
9. In my view, the short delay in filing the notice of appeal has been well explained by the applicant.
10. Although the possible chances of success of an intended appeal is one of the factors that this Court may consider, a single judge cannot authoritatively pronounce himself on the issue. Suffice to say that the proposed grounds of appeal as shown on the draft memorandum of appeal are arguable. Whether the trial courts' judgment has been fully executed is not an issue that I can make a firm finding on at this juncture.
11. All in all, I am inclined to grant the orders sought by the applicant and hereby grant leave to the applicant to file and serve the notice of appeal within 14 days from the date of the ruling. Thereafter the applicant shall file and serve the record of appeal within 30 days from the date of service of the notice of appeal. The applicant shall bear the costs of this application.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY DECEMBER, 2021.

D. MUSINGA (P)

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

