



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: OUKO, (P) (IN CHAMBERS))

CIVIL APPLICATION NO. 137 OF 2019

BETWEEN

BENJAMIN AMCHAT.....1ST APPLICANT

JACKSON KIPSANG KOGO.....2ND APPLICANT

AND

BEATRICE NANYAMA MURUNGA.....RESPONDENT

(Being an application for leave to appeal out of time from the Judgment of the High Court of Kenya at Eldoret, (A. Ombwayo, J.) delivered on 21st December, 2018

in

ELC No. 826 of 2012)

RULING

At the heart of this dispute is parcel of land known as Nandi/Kiptel/1058 measuring 3.72 Ha. Though the respondent is the registered proprietor of the suit property, the applicants challenged that ownership in the Environment and Land Court. The court, (Ombwayo, J.) not being convinced by the applicants' claim, by a judgment rendered on 21st day of December, 2018, rejected it and instead ordered the applicants to vacate the suit property within 45 days of the date of the decision or face eviction.

The applicants were aggrieved but failed to take the first step in challenging the judgment. They had 14 days from 21st December, 2018, the date of the judgment, to give notice in writing by lodging the notice of appeal with the registrar of the trial court.

Threatened with execution, the applicants now move the Court by a motion filed on 31st October, 2019 under **Rule 4** of the Court's Rules for leave to enlarge time for them to file and serve the notice of appeal. The applicants concede that, although their advocates notified them when the judgment was delivered, they did not know of the right to appeal; that they only knew that they could appeal in February, 2019; that at that point, they instructed the advocate to seek, before the trial court an order of stay pending appeal to this Court; and that the application was unsuccessful. They have also argued that the intended appeal is arguable; that they had lived on the suit property for over 30 years; that if evicted, those who live on the land, including school-going children, would be adversely affected; and that the respondent will not suffer any prejudice if the application was to be allowed.

Only the applicants complied with the directions for filing written submissions. I have considered those submissions and remind myself that under **Rule 4** aforesaid this Court;

“...may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended”.

In construing this rule, the Court has drawn the following conditions to be met in considering an application for extension of time. The decision, whether or not to extend the time is essentially in the discretion of the single Judge; that in exercising the discretion, the Judge will

be guided by, among other considerations, the length of the delay, the reason for the delay; the chances of the appeal succeeding if the application is granted and the degree of prejudice to the respondent if the application is granted. See **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi** - Civil Application No. NAI 255 of 1997.

Since the decision that aggrieved applicants was made on 21st December, 2018, they were expected to give notice of their intention to appeal on or before 1st February, 2019, taking into consideration the December Recess. Instead, this application was taken out on 31st October, 2019. Even assuming that they learnt of their right of appeal in February, 2019 and even tried to stay execution by applying to the court below, in my estimation, a delay of 8 months was not only prolonged but also unexplained, bearing in mind that what the applicants were required to do was to be done within 14 days.

For these reasons, I find no merit in the application. It is accordingly dismissed. I make no orders as to costs.

Dated and delivered at Nairobi this 7th day of August, 2020.

W. OUKO, (P)

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR