



IN THE COURT OF APPEAL

AT NYERI

CORAM: KIAGE J.A (IN CHAMBERS)

CIVIL APPLICATION NO. 28 OF 2019

BETWEEN

JOSEPH KABERIA ARIMBA THE SPEAKER COUNTY ASSEMBLY OF MERU.....1ST APPLICANT

THE CLERK COUNTY ASSEMBLY OF MERU..... 2ND APPLICANT

THE COUNTY ASSEMBLY OF MERU.....3RD APPLICANT

ELIAS MUREGA JULIUS.....4TH APPLICANT

AND

DOUGLAS BUNDI KIRIMI.....RESPONDENT

(An application for extension of time to file and serve the record of appeal

from the Judgment and Decree of the High Court at Meru (F. Gikonyo, J.)

dated 31st May, 2018) in **Petition No. 26 of 2017)**

RULING

The applicants have filed a Notice of Motion dated 7th March 2019 seeking this main order;

1. ...

2. THAT this Honourable Court be pleased to enlarge the time limited for filing Memorandum and Record of Appeal to enable the applicant appeal against the entire decision of Hon. Justice F. Gikonyo (MR) in Meru High Court Constitutional Reference No. 26 OF 2017; Douglas Bundi Kiriimi - vs- Joseph Kaberia (The Speaker County Assembly of Meru), The Clerk (County Assembly of Meru), The County Assembly of Meru and Elias Murega Julius.

3. Costs of this application be provided for.

The grounds on the face of the application are that the delay in filing the Record of appeal was occasioned by the High Court which delayed in supplying the Counsel on record with certified copies of the typed proceedings. Further delay was occasioned by time spent in prosecuting an application for stay of execution and defending a subsequent application for joinder that was filed by proposed interested parties.

I have considered the application for extension of time, the grounds in support thereof, the replying affidavit filed by the respondent(s), the submissions as well as the law. An application for extension of time is not novel, nor are the guiding principles obscure: they are well-settled and were well-captured in **LEO SILA MUTISO V. ROSE HELLEN WANGARI MWANGI (1999) 2 EA 231**, 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.” (My emphasis)

In determining whether or not the applicant is worthy of time extension, it is prudent that I peruse the record in order to establish the events that led to this delay. From the timelines, it is clear that the judgment was delivered by Gikonyo, J on 31st May 2018. By a letter, which was received by the High Court registry on 11th June 2018, counsel requested for certified copies of the typed proceedings and also filed a notice of appeal.

A stay of execution application was filed at the High Court via a motion dated 9th July 2018. This was followed by an application dated 18th July 2018 by the County Assemblies Forum who sought to be enjoined in the proceedings as interested parties. Gikonyo, J heard both applications and delivered the rulings thereon on 31st October 2018. The requested certified copies of the typed proceedings were ready for collection by 8th November 2018.

Whereas I am prepared to hold in the applicant’s favour that the typed proceedings were delayed as counsel prosecuted the stay application and defended another I wonder why he took so long before requesting for the certificate of delay. He made the request on 11th January 2019, about 60 days from the day he received the certified proceedings. No attempt has been made to explain that patently inordinate delay. Further, even after the certificate was issued on 18th February 2018, it took another 14 days to file this application. That fortnight of inactivity is unexplained. I find that delay shows that the applicant not move with the necessary haste the urgency to file this remedial application as soon as he possibly could. The only explanation offered is no more than an attempt at hiding behind the delay occasioned by the court below as an excuse for his own inaction. It seems to me to be a lack of candour, a failure to own up to his own omissions.

This Court has been clear that even though there is not set minimum period of delay, any delay, no matter how slight, must be satisfactorily explained. That not happened herein and the delay, which is long and inordinate, appears to me to be inexcusable. Enlargement of time lies in my discretion to be exercised judicially in accordance with sound principle, not out of whim, caprice or sympathy. It is also an equitable relief which attaches relevance to the general conduct of a pleader including their candour or lack of it.

Having given due consideration to the application in totality and what was said in opposition thereto, I have come to the conclusion that it is devoid of merit. It is accordingly dismissed without costs.

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

P. O. KIAGE

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR