



IN THE COURT OF APPEAL

AT NAKURU

(CORAM: KANTAL, JA (IN CHAMBERS))

CIVIL APPLICATION NO. 132 OF 2019

BETWEEN

JOYCE SHANGUI KIBE 1ST APPLICANT
LAWRENCE NJUGUNA KIBE2ND APPLICANT
PATRICK NJUGUNA KIBE.....3RD APPLICANT
DAVID SANJO..... 4TH APPLICANT
NJERU KUNGU (Suing as the administrator of the estate of SIMON PETER
NJENGA KIBE (Deceased)5TH APPLICANT
SUSAN WANGUI MOTIAN (Suing as the administrator of the estate of SIMON
MOOTIAN KAREREI (Deceased) 6TH APPLICANT
ESTHER WANGARI KIBE (Suing as the administrator of the estate of DAVID
HURRY KIBE (Deceased) 7TH APPLICANT

AND

JEREMIAH PARKURITO KUYO..... 1ST RESPONDENT
NKINGIS OLE KUYO.....2ND RESPONDENT
JAMES KESUI OLE KUYO.....3RD RESPONDENT
KONANA OLE KUYO..... 4TH RESPONDENT
SENIOR RESIDENT MAGISTRATE’S COURT AT NAROK.....5TH RESPONDENT
THE REGISTRAR MINISTRY OF LANDS NAROK..... 6TH RESPONDENT

(Being an application to file a notice of appeal out of time against the ruling of the environment and land court of Kenya at Narok (Kullow, J.) delivered on 2nd July, 2019 **in Petition No. 20 of 2018**)

RULING

In a petition filed before the Environment and Land Court, Narok, the applicants made various prayers. The respondents took preliminary objections on both points of law and fact and those objections were upheld by Kullow, J, in a ruling delivered on 2nd July, 2019. The

petition was thus dismissed. The applicants have approached me under rule 4 of the rules of the Court praying that I grant them leave to file notice of appeal out of time. In grounds in support of the Motion and in a supporting affidavit of a lawyer, **Faith Mutio Mutuku**, on record for the applicants it is stated that after the said ruling, a notice of appeal was drawn and filed at the High Court of Kenya, Narok, on 11th July, 2019 but was not served. Further, that the said lawyer was bereaved immediately thereafter (on 12th July, 2019) when her father died. For that reason notice of appeal was not properly lodged or served in accordance with the rules.

I have considered the material that has been placed before me and I take the following view of the matter.

The principles which I need to consider in an application like this one were well set out in the case of **Leo Sila Mutiso v Rose Wangari Mwangi [1999] 2 E.A. 233**. They were identified to be:

“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”.

As I have said ruling was delivered by the Environment and Land Court on 2nd July, 2019 and an appropriate notice of appeal was drawn and filed in that Court on 11th July, 2019. That was within the timelines set out by the rules of this Court. That notice was not lodged with the Registrar as is required. **Miss Faith Mutio Mutuku** explains that she lost her father and that is why she did not concentrate on the issue of following up on the notice of appeal – she instead left office and paid attention to the not unimportant matter of burying her father.

I am satisfied in the circumstances of the matter that the delay in taking certain steps has been properly explained. I note that the dispute involves revocation of titles to certain lands and the applicants should have an opportunity to challenge the findings by the trial court on appeal.

I allow the Motion dated 6th August, 2019. Let the applicants lodge a notice of appeal within 14 days of today and serve it on the respondents in accordance with the rules. Costs of the Motion will be in the intended appeal.

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

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR