



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MUSINGA, JA (IN CHAMBERS))

CIVIL APPLICATION NO. 71 OF 2020

BETWEEN

PAUL NAKACHII ERENGAPPLICANT

AND

SWISSCOM LOGISTICS LIMITED..... RESPONDENT

(Being an application for leave to extend time to file a Record of Appeal out of time from the Judgment of the Environment and Land Court of Kenya at Nairobi (Mweresa Eboso, J.) dated 12th November, 2019 in ELC Case No. 924 OF 2014)

RULING

1. The applicant seeks extension of time to file a record of appeal against the judgment and decree in **Environment and Land Court Case No. 924 of 2014** dated 12th November, 2019.

2. The applicant lodged a notice of appeal on 13th November, 2019 and served it upon the respondent on 18th November, 2019. On 13th November 2019 the applicant applied for typed proceedings, judgment and decree and paid for them. It was not until 14th February, 2020 that the applicant's advocates were notified that the documents applied for were ready for collection.

However, when the applicant's representative went to collect them he found that they had not been certified. By 2nd March, 2020 when the certified proceedings and judgment were received the time for lodging an appeal had lapsed.

3. On 3rd March, 2020 the applicant sought a certificate of delay, which is annexed to the application. The applicant believes that the intended appeal has high chances of success and has annexed a copy of the memorandum of appeal to the application.

4. In its replying affidavit sworn by **Paul Kipchumba Mecha**, one of its directors, the respondent stated that the applicant does not have an arguable appeal and advanced various arguments in support of that contention.

5. He also faulted the applicant for failing to collect the certified copies of the proceedings, saying that they were ready for collection on 6th February 2020, when the Deputy Registrar of the Environment and Land Court notified all the parties. He urged the Court to grant extension of time as sought.

6. I have considered the submissions filed by both parties. The principles that this Court considers in an application of this nature are well settled in **LEO SILA MUTISO v ROSE HELLEN WANGARE MWANGI, Civil Application No. NAI 255 of 1997**, this Court stated:

"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".

7. Taking into account the above principles, I find that there was no inordinate delay in filing the application.

The applicant could not have collected the proceedings when they were uncertified. The certificate of delay annexed to the applicant's affidavit is sufficient.

8. As regards the chances of the intended appeal, although the respondent has advanced various arguments to show that the intended appeal is not arguable, it must be borne in mind that an arguable appeal is not one that must succeed, it is one that is worth considering and is not on the face of it frivolous. Looking at the impugned judgment and the proposed memorandum of appeal, it cannot be said that the intended appeal is not arguable.

9. The respondents shall not suffer any prejudice if the application is granted. On the other hand, unless the application is allowed, the applicant will have been denied his constitutional right of appeal.

10. Consequently, I allow the application and direct the applicant to file and serve the record of appeal within the next ten (10) days from the date of delivery of this ruling. Each party shall bear its costs of the application.

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

D.K. MUSINGA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR