



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MUSINGA, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. 125 OF 2018

BETWEEN

PETER MURIUNGI..... 1st APPELLANT

KABURU LERIA.....2nd APPELLANT

AND

TRUSTEES, REGISTERED CATHOLIC

PARISH D.O.D LAARE.....RESPONDENT

(Being an application for extension of time to file a memorandum of appeal from the order of the High Court of Kenya at Meru (L. Mbugua, J.)

in

E & L Case No.270 of 2016)

RULING

1. The applicants have sought extension of time to file and serve a Memorandum of Appeal against the judgment of the **Environment and Land Court (ELC)** at Meru delivered on 26th January 2018. In the said judgment, the trial court dismissed the applicants' suit where they were seeking an order of a permanent injunction to restrain the respondent from evicting them from a parcel of land where they were carrying on the business of a garage. Being aggrieved by the said judgment, the applicants filed a notice of appeal on 31st January 2018.
2. On 18th April 2018 the applicants filed an application for stay of execution of the said judgment. On the same date the respondent filed an application seeking leave to forcefully evict the applicants using a firm of auctioneers. The trial court, in a ruling delivered on 26 th September 2018 dismissed the applicants' application and granted the respondent's application.
3. The reason for delay in filing the Memorandum of Appeal, as per the applicants, is that the proceedings which they applied for immediately after delivery of the judgment were not availed to them in good time. The applicants allege that the court file was with the trial judge between 26th and 18th April 2018 when they filed the application for stay of execution.
4. In response, the respondents stated that the applicants were lawfully evicted from the suit premises on 1st October 2018; that there was inordinate delay in filing the application and the delay had not been well explained; that there was no evidence that the court file was not available between 26th January and 18th April, 2018; and that the intended appeal has no chances of success.
5. I have carefully considered the application, the affidavits and submissions by both parties. The principles that guide this Court in an Application of extension of time under **rule 4 of this Court's Rules** are well settled. In **LEO SILA MUTISO v ROSE HELLEN WANGARI MWANGI, Civil Application No. NAI 255 OF 1997**, this Court held:

“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".

6. The impugned judgment was delivered on 26th January 2018. Although the applicants stated that they applied for proceedings in good time, they did not avail any evidence as to when they did so. They ought to have attached to their application a copy of the letter bespeaking proceedings as well as a copy of a receipt evidencing payment of the required court fees. They did not do so.

7. Secondly, the applicants alleged that between 26th April 2018 and 29th September 2018 the court file was held by the trial Judge and they could not access it to obtain the proceedings. Again, no evidence was provided for that contention. The applicants would have written a letter to the Court's Deputy Registrar requesting supply of the typed proceedings, even if the file was with in the trial judge's chambers. The applicants did not state when they eventually got the typed proceedings, if at all.

8. This Court has repeatedly stated that every delay, even of one day, must be explained. The Supreme Court in **COUNTY EXECUTIVE OF KISUMU v COUNTY GOVERNMENT OF KISUMU & 8 OTHERS**, Civil Application No. 3 of 2016 held:

"[23]. It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the court."

9. In this application, I circumstances, there was sufficiently explained.

find and hold that in the prevailing inordinate delay that has not been

10. As regards the chances of success of the intended appeal, a single judge considering an application for extension of time cannot delve much into such an issue, save making of a *prima facie* observation, otherwise he would be usurping the role of the full bench. All I can say is that the applicants, having been lawfully evicted from the suit premises on 1st October 2018, the chances of success of the intended appeal are minimal. The applicants were not claiming ownership of the premises where they were running a garage, their contention was that they were lawful tenants of the respondent, but the trial court found otherwise.

11. All in all, I find this application bereft of merit and dismiss it with costs to the respondent.

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

D.K. MUSINGA

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR