



IN THE COURT OF APPEAL

AT NAIROBI

[CORAM: SICHALE, JA IN CHAMBERS]

CIVIL APPLICATION NO. 119 OF 2019

BETWEEN

TAGAGE HUSSEIN EDEMA .....APPLICANT

AND

HUSSEIN EDEMA BARISO .....RESPONDENT

(An application for extension of time to file a Notice of Appeal against the judgment of the High Court of Kenya at Marsabit (Chitembwe, J) dated **19th June, 2019** IN Marsabit Misc. Succession Cause No. 1 of 2018

RULING

The applicant, **Gagaye Hussein Edema** filed a Notice of Motion dated **25<sup>th</sup> July, 2019**. The motion is an omnibus application containing several prayers that cannot be handled by a single judge. I shall however deal with prayer No. 3 in the motion that seeks extension of time to file a Notice of Appeal and "... *Consequential Memorandum of Appeal*..." against the High Court decision rendered on **19<sup>th</sup> June, 2019** in Marsabit Miscellaneous Succession No. 1 of 2018.

The motion is supported by the affidavit of the applicant sworn on the same day (**25<sup>th</sup> July, 2019**). The reason for the delay is attributed to the applicant's change of advocate from the firm of **Messrs Biwott Korir & Co. Advocates** to the firm of **Ndungu & Co. Advocates**. The applicant annexed a letter dated **21<sup>st</sup> June, 2019** from his previous counsel applying for typed proceedings and a receipt of payment of Ksh 2,000.00 being costs of proceedings and another receipt of Kshs 2,670.00 being further costs for the proceedings.

The respondent **Hussein Edama Bariso** opposed the motion vide an affidavit dated **20<sup>th</sup> December, 2019** on the basis, *inter alia*, that the appeal has no chances of success.

I have considered the motion, and its supporting affidavit and the respondent's replying affidavit in opposition to the motion in absence of counsel due to the prevailing circumstances caused by Covid 19 pandemic. In my view, the time lapse from the date of delivery of judgment (**19<sup>th</sup> June, 2019**) and the subsequent endeavours by the applicant to obtain proceedings were done without delay. I note that the motion was filed on **25<sup>th</sup> July, 2019**, within a period of 36 days from the date of judgment on **19<sup>th</sup> June, 2019**. This delay cannot be said to be inordinate.

It is in view of the above that I grant leave to the applicant to file and serve the Notice of Appeal within seven (7) days of today's date.

Each Party to bear his own costs.

**Dated and Delivered at Nairobi this 7<sup>th</sup> Day of August, 2020.**

**F. SICHALE**

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**