



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CROAM: KANTAL, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. E242 OF 2020**

**BETWEEN**

**KENNETH KIPKURUI MIBEI** (*Suing as the administrator on behalf*

*of the estate of the* **JOSEPH KIMIBEI ROTICH**)....**APPELLANT/APPLICANT**

**AND**

**ELIZABETH KILELE**.....**1ST RESPONDENT**

**FREDRICK KIPTONUI KILELE**.....**2ND RESPONDENT**

**JOSEPH KIPSIGEI BIL, FAITH NAITORE KIRIMI**

**& PHINEAS MWONGERA KIRIMI** (*Sued as the administrators*

*on behalf of the estate of the late* **DANIEL KIRIMI M'MUNA**

**ALIAS KIRIMI M'MUNA**).....**3RD RESPONDENT**

**THE CHIEF LAND REGISTRAR**.....**4TH RESPONDENT**

***(Being an application for extension of time to file and serve notice and record of appeal from the Ruling of the Environment and Land Court of Kenya at Nairobi (Eboso, J.) delivered on 18th June, 2020***

*in*

**ELC No. 147 of 2019)**

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**RULING**

The dispute before the Environment and Land Court at Nairobi revolved around a parcel of land **Land Reference No. 330/507**. The plaintiff in that court (**Fredrick Kiptonui Kilele**) sought various orders against the defendants. The defendants took a preliminary objection to the effect that the suit was a non-starter for being time barred under the Limitation of Actions Act. That objection was considered by **Eboso, J.** who, in a ruling delivered on 18th June, 2020 upheld the objection and the net result was that the suit was struck out.

In the Motion before me brought under various provisions of law the applicant prays in the main that the court be pleased to extend the time for filing an appeal against the said ruling and that the notice of appeal dated 6th August, 2020 be deemed as properly filed. The Motion is supported by the grounds set out and an affidavit of **Kahiga Waitindi**. In sum the applicant says that neither he nor his advocates were aware of the date of the ruling; that failure to know of the date set for ruling was occasioned by non-communication of directions on delivery of the ruling by registry staff and inaccessibility of the registry for purposes of perusal of the court file; that a search at the website of Kenya Law Reports on 5th August, 2020 revealed that a ruling had been delivered; that he had then given instructions for an appeal to be filed – a notice of appeal was filed and a letter bespeaking proceedings written to Court; and the applicant should be allowed to pursue an appeal.

I did not see a replying affidavit by the respondents. I have considered material placed before me and I take the following view of the matter.

The principles which I need to consider in an application of this nature were well set out in the case of **Leo Sila Mutiso v Rose Wangari Mwangi [1999] 2 EA 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”.***

Ruling intended to be appealed was delivered on 18th June, 2020. The applicant and his advocates say that they were unaware of the date for delivery of ruling; that the registry was inaccessible as the Court was closed due to the current global COVID-19 pandemic. They say that they only came to learn that ruling had been delivered when the lawyer did a search on the website of Kenya Law Reports on 5th August, 2020 and immediately upon making that discovery a notice of appeal was filed the next day 6th August, 2020. In these circumstances I am satisfied that delay in lodging a notice of appeal has been properly explained because there was no notice that ruling was to be delivered on the day it was delivered. The explanation that the lawyers could not access the Court Registry as the courts were closed is a reasonable explanation. The dispute in the lower court involved a parcel of land and I don't think in the circumstances where the suit was struck out through a preliminary objection that the respondents will be prejudiced. I hesitate to comment on whether the appeal has chances of success.

I allow the Motion dated 14th August, 2020. Let the applicant 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 23rd day of October, 2020.**

**S. ole KANTAI**

.....

**JUDGE OF APPEAL**

*I certify that this is a true*

*copy of the original.*

*Signed*

**DEPUTY REGISTRAR**