



IN THE COURT OF APPEAL

AT NYERI

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

CIVIL APPLICATION NO. 86 OF 2018

BETWEEN

KIURA CHARLES MUCIRA.....APPLICANT

AND

ROSE MUROKO.....RESPONDENT

(An application for extension of time to file and serve notice of appeal out of time from the Judgment of the Environment and Land Court of Kenya at Kerugoya (Olao, J.) dated 22nd December, 2017

in

ELC Case No. 144 OF 2016)

RULING

In a Judgment delivered by **Olao, J.**, on 22nd December, 2017 the Judge found that title to land parcel **No. Ngariama/Thirikwa/1411** was obtained illegally and unprocedurally and should be cancelled; that the Land Registrar, Kirinyaga, do register the Plaintiff (the respondent here – **Rose Njoki Muroko**) as the proprietor of that land in place of the defendant (**Kiura Charles Muchira**) and the defendant (applicant here) was ordered to meet the costs of the suit.

I am asked in the Motion said to be brought under **Order 50(6) Civil Procedure Rules** (this has no application to this Court) and all enabling provisions of law to grant an extension of time to the applicant to file and serve Notice of Appeal and Record of Appeal out of time. In grounds in support of the application and in a supporting affidavit of the applicant who acts in person it is said that the applicant did not know the procedure required in filing an appeal; that he came to learn that he was supposed to file an appeal within 60 days which he did not do; that the respondent is threatening to evict him from the land; that the intended appeal has high chances of success since the respondent is claiming his land which he had entered into a sale agreement with the respondent's late husband prior to his death and that if the Judgment of the Environment and Land Court at Kerugoya is executed the applicant will suffer irreparable loss.

In a replying affidavit the respondent says that the trial Judge was right to order the title to be cancelled as there was no consent of the Land Control Board; that the intended appeal has no chance of success; that the applicant knew of the date when Judgment of the trial court was delivered; that it was only after being served with notice of taxation of a bill of costs that the applicant brought this application and that the decree the applicant intends to challenge in the intended appeal has already been executed and title has been issued in favour of the respondent.

I have considered the material placed before me and I take the following view of this 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 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”.

I note that Judgment was delivered on 22nd December, 2017 and this Motion was filed on 16th July, 2018, about 7 months later. Olao, J., in the Judgment intended to be appealed identified problems encountered by Judges and Magistrates who preside over matters where parties appear in person. He said:

“Determining disputes in which parties are acting in person can be a cause of considerable difficulties to the Presiding Judge or Magistrate. Pleadings will in most cases be poorly drafted making it difficult to comprehend the remedies sought by the parties. Then the trial itself can be a nightmare with the parties unable to articulate their respective cases ...”

As I have said the Motion was filed about 7 months after Judgment and I have noted that the parties were acting in person in the trial court and the applicant is acting in person in the intended appeal. I also note that the dispute before the trial court revolved around a parcel of land registered in the name of the applicant but claimed by the respondent. The trial Judge ordered the title to be cancelled and the land he registered in the name of the respondent. The applicant claimed to have purchased the land from the respondent’s husband who had since died. Ownership of land is an emotive issue and I think in circumstances that obtain here that the applicant should have an opportunity to exhaust his ligation rights and it be determined, in the intended appeal, whether the order to cancel title to ownership of the land was right. I am satisfied that delay in bringing an appeal is not inordinate; the applicant is acting in person and may not have known of the timelines for filing an appeal. Although the respondent said that the decree has been executed and title has been issued in her favour this is an issue that can still change if the intended appeal succeeds.

I grant the Motion. Let the applicant file a Notice of Appeal within 14 days and serve it accordingly and thereafter file record of appeal within 30 days of service of notice of appeal. Costs of the Motion will be in the intended appeal.

Dated and delivered at Nairobi this 23rd Day of October, 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