



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. E245 OF 2020

BETWEEN

LENTEK SOKOIYON.....APPLICANT

AND

THE LAND REGISTRAR KAJIADO NORTH SUB-COUNTY1ST RESPONDENT

THE DISTRICT LAND SURVEYOR, KAJIADO NORTH SUB-COUNTY.....2ND RESPONDENT

KAUSAU OLE KURENDE.....3RD RESPONDENT

SARAPIN SOKOIYON 4TH RESPONDENT

MURERA CHURCH..... 5TH RESPONDENT

SIMITA OLE PARANTAI6TH RESPONDENT

(An application for extension of time to file an appeal against the Ruling of the Environment and Land Court of Kenya at Kajiado (Ochieng, J.) dated 27th May, 2020 in ELC Case No. 842 of 2017)

RULING

I am asked in the Amended Notice of Motion dated 17th August, 2020 brought under various provisions of law to extend time for the applicant to lodge an appeal out of time. In ground in support of the Motion and in an affidavit of the applicant **Lentek Sokoion** it is stated that the applicant filed an application at the Environment and Land Court at Kajiado seeking orders that the 3rd respondent’s suit against the applicant be dismissed and that court be pleased to review its orders issued on 24th January, 2018, 2nd October, 2018 and 2nd April, 2019; on 27th May, 2020 that court delivered a ruling dismissing the application; that the applicant is aggrieved by those findings and intends to appeal but could not do so as required by the rules of this Court because the requested proceedings, ruling and order of that court which he required to prepare an appeal but he did not receive them on time. He says he received them on 12th August, 2020 by which time he could not lodge notice of appeal; that he had by then decided to change lawyers and it took time for new lawyers to obtain the file from the previous lawyers; that there are serious and arguable grounds of appeal which the applicant think have high chances of success and he should be accorded an opportunity to pursue an appeal. I did not see any replying affidavit.

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”.

The ruling intended to be appealed was delivered on 27th May, 2020. The applicant says that he through his lawyers immediately applied for

proceedings, the ruling and order and this were granted on 12th August, 2020 when time for lodging record of appeal had lapsed. He says at paragraph 7 of his affidavit that Notice of appeal had been filed by his then lawyers on 5th June, 2020.

In the premises where notice of appeal was filed on time and proceedings of the trial court required and were only availed to the applicant on 12th August, 2020 I am satisfied that there is no inordinate delay in this matter.

It is said in the Motion that documents were allowed into the proceedings which documents the applicant says should have been expunged. I think the applicant should have an opportunity to pursue this in the intended appeal.

I have not been shown whether the respondents would be prejudiced in any way.

In the premises, I allow the motion dated 17th August, 2020. Let the applicant lodge record of appeal within 30 days of today and serve it accordingly on the respondents. Costs of the motion will be in the 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