



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPEAL (APPLICATION) NO. 286 OF 2018

BETWEEN

SPRINGBOARD CAPITAL LIMITED.....APPELLANT/APPLICANT

AND

JOSPHAT KIHIA NGUGI.....1ST RESPONDENT

JOYCE WANJIKU NGUGI.....2ND RESPONDENT

GEORGE NJUGUNA NJOROGE.....3RD RESPONDENT

LAND REGISTRAR, KIAMBU.....4TH RESPONDENT

(Being an appeal from the Ruling of the Environment and Land Court of Kenya at Thika

(L. Gacheru, J.) delivered on 27th April, 2018

in

ELC Case No. 622 OF 2017)

RULING

The applicant, **Springboard Capital Limited** brings this Motion under **rule 4** of the **rules of this Court** amongst other provisions of law asking for extension of time to file and serve Record of Appeal out of time against the Ruling and Orders of Gacheru, J, made on 27th April, 2018 at the Environment and Land Court at Thika. In grounds in support of the Motion and in an affidavit of **Wilson Karanja** who is the **Director and Chief Executive Officer** of the applicant it is said that the applicant is dissatisfied with the ruling of the trial COURT and intends to appeal; that proceedings of the lower court took long to be supplied; that proceedings were availed to the applicant on 7th August, 2018 which was more than 60 days after ruling; that Notice of Appeal and letter bespeaking proceedings were filed on time and that the intended appeal is not frivolous but is arguable with probability of success.

The applicant filed written submissions which I have considered.

The 1st respondent filed written submissions and a Case Digest which I have also considered.

The 1st respondent says that the Judge allowed an application where the applicant and the 2nd, 3rd and 4th respondents were restrained from trespassing on, selling, transferring, alienating and/or interfering with the parcel of land known as **Title No. Karai/Gikambura/1412** pending hearing of the suit. The 1st respondent also says that although Notice of Appeal was filed on time the same was not served within the period required by the rules of this Court; further, that the intended appeal is incompetent.

The principles that apply in an application of this nature were well captured in the oft-cited case of **Leo Sila Mutiso v Rose Wangari Mwangi [1999] 2 EA 233**. They are:

“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 the ruling intended to be appealed was made on 27th April, 2018 and the Motion was filed on 20th August, 2018, about 4 months later. The applicant says that it filed notice of appeal on time but did not file record of appeal because proceedings of the lower court were not availed until 7th August, 2018. I find no inordinate delay in those circumstances.

Whether the appeal is competent or not is an issue that the respondents can take in accordance with the rules of this Court.

I am satisfied that this is an application where I should exercise discretion in favour of the applicant. The Motion is allowed. Let the applicant serve notice of appeal within 7 days of today and file Record of Appeal within 30 days thereafter. 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