



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CIVIL APPLICATION NO. 50 OF 2020**

**(CORAM: OKWENGU, JA (IN CHAMBERS))**

**SANTABEN RAMNIKLALA PARMA & 2 OTHERS.....APPLICANTS**

**AND**

**WARPA LIMITED & ANOR.....RESPONDENT**

*(Being an application for extension of time to file notice of appeal against the judgment of the Environment and Land Court at Nairobi (O’kongo, J) delivered on 5th December 2019)\_ELC no. 725 of 2013*

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**RULING**

[1] By a notice of motion dated 24th February 2020, the applicant **Isaac Gichanga Wangari** who was the 2nd plaintiff in Nairobi Environment and Land Court (ELC), **Suit No. 725 of 2003 (OS)** seeks orders to have time extended to enable him file a notice of appeal out of time against the judgment of the ELC court (Okong’o J) delivered on 5th September 2019.

[2] The application is supported by an affidavit sworn by the applicant, to which is annexed the judgment, subject of the intended appeal. The applicant has also filed written submissions. The gist of the applicant’s motion is that judgment was delivered on the 5th of December 2019 and that the applicant filed a notice of appeal on 23rd December, 2019 which was outside the 14 days provided under Rule 75(2) of the Court Rules. The applicant explains that he was unwell. However, he has not annexed any documents to support that contention. Secondly, the applicant’s motion seeking extension of time was filed on 24th February 2020. No explanation has been given for the inordinate delay in filing this application.

[3] While it is now settled that a single judge has unfettered discretion under rule 4 of the Court of Appeal Rules, to extend time for the doing of any action provided by the Rules, that discretion has to be exercised judicially. This means that the applicant must satisfy the Court that there is justification for the exercise of that discretion.

[4] In **Leo Sila Mutiso v Rose Hellen Wangari Mwangi, (Civil Application No. Nai. 255 of 1997) (unreported)**, it was held that such justification may be found in the peculiar circumstances of the case including the length and reason for the delay. In this case, the applicant has not provided any good reason for the delay in bringing his motion, nor has he substantiated his allegation that he filed the notice of appeal late as he was unwell. Clearly, the delay is unexplained and inordinate.

[5] In the circumstances, I find no merit in the applicant’s motion.

It is dismissed with costs.

**Dated and delivered at Nairobi this 9<sup>th</sup> day of October, 2020.**

**HANNAH OKWENGU**

.....

**JUDGE OF APPEAL**

*I certify that this is a true*

*copy of the original.*

*Signed*

**DEPUTY REGISTRAR**