



IN THE COURT OF APPEAL

AT NAIROBI

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

NYERI CIVIL APPLICATION NO. 31 OF 2018

BETWEEN

PETER OMOKE OMONYI.....APPLICANT

AND

CHARLES KAMAU MUTHONI.....RESPONDENT

(Being an application for to file and serve a notice of appeal and memorandum of appeal out of time against the ruling and order of the Environment and Land Court (Hon. B. N. Olao, J.) dated 29th September 2017 in Kerugoya ELC Appeal No. 2 of 2015

RULING OF THE COURT

1. **UPON** perusing the Notice of Motion dated 13th March 2018 brought under **Rule 4, 42(1), 43(1), 4** of the **Court of Appeal Rules 2010**, substantively seeking an order that leave be granted to the applicant to appeal out of time against the ruling delivered by **Hon. Justice B. N. Olao** dated 29th September 2017 in **ELC Appeal No. 2 of 2015**; and an order that costs of this application be provided for; and
2. **UPON** reading the grounds in the body of the application and the supporting affidavit of **Peter Omoke Omonyi** sworn on 13th March 2018; and
3. **UPON** noting that the application has not been opposed by any replying affidavit from the respondent who was represented when the application came up for the first hearing on 23rd April, 2019 when counsel appearing for the respondents intimated to the Court that they had been invited to appear for the hearing of the application on that date through phone and that although they had not been served with the application, they desired to file a replying affidavit thereto; and
4. **UPON** perusing an email from the Deputy Registrar of this court to the advocates for the respective parties of Wed, Nov. 4, 2020 informing them of the hearing date of the application, I am satisfied that the respondent had due notice of the application and in the absence of any evidence to the contrary he is deemed not to oppose the application; and
5. **HAVING** considered the principles that guide this court in the exercise of its mandate under Rule 4 of this court's rules, being the substantive rule for extension of time within which to comply with timelines set out in the rules of this court as restated and crystalized in the case of **Martin W. Nguru vs. Attorney General [2020]eKLR** and **Vishva Stone Suppliers Company Limited vs. RSR Stone [2006] Limited [2020]eKLR**, I am satisfied that the applicant's explanation that delay in timeously initiating the intended appellate process was due to the delay in furnishing him with the requisite certified copies of the proceedings for the purpose and which being uncontroverted is plausible and therefore reasonable. The application is therefore meritorious; and
6. **HAVING** reached that conclusion, I make the following orders:
 - 1) **The application dated 13th March 2018 be and is hereby allowed on the following terms:**
 - (a) **The applicant has fourteen (14) days from the date of the delivery of the ruling to file a notice of appeal.**
 - (b) **The applicant has seven (7) days from the date of the lodging of the notice of appeal to serve the same on the respondent.**
 - (c) **The applicant has sixty (60) days from the date of the lodging of the notice of appeal to file and serve the record of appeal.**
 - (d) **The costs of the application to abide the outcome of the intended appeal.**

Dated and delivered at Nairobi this 20th day of November, 2020.

R. N. NAMBUYE

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR