



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: M. MAKHANDIA, JA. (IN CHAMBERS))

CIVIL APPLICATION NO. 345 OF 2018

BETWEEN

SUSAN NYOKABI MWANGI KINGORI.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF NAIROBI.....FIRST RESPONDENT

CHRISTOPHER MAINA CHEGE.....SECOND RESPONDENT

PETER KUNG'U NG'ANG'A.....THIRD RESPONDENT

(Application to appeal out of time arising from the judgment and decree of the Environment and Land Court at Nairobi, (K. Bor, J.) dated 26th July, 2018

in

MILIMANI ENVIRONMENT AND LAND COURT

CASE NO. 418 OF 2010)

RULING

This application seeks to invoke this Court's unfettered discretion under **Rule 4** of its rules and enlarge the time within which the applicant may file an intended appeal. The judgment the applicant seeks to impugn, if the application is allowed was delivered by the Environment & Land Court on 26th July, 2018. The applicant deposes that she immediately requested for certified copies of the proceedings and judgment to enable her mount the appeal on 31st August, 2018. On 8th August, 2018, she filed the notice of appeal. The applicant was notified that the proceedings were ready for collection on 13th November, 2018, and was subsequently issued with a certificate of delay dated 19th November, 2018. The certificate by the Deputy Registrar confirmed that it took 74 days to prepare and supply the proceedings and judgment, from 31st August, 2018 to 13th November, 2018. She opines that her intended appeal has a high chance of success and has annexed a draft memorandum of appeal to demonstrate the same.

In applications of this nature, the Court in reaching a conclusion takes into account the period of delay, the reason for the delay; possible prejudice that may result to the respondent if the application is allowed and whether, *prima facie*, the intended appeal has chances of success or is a mere frivolity. See **Leo Sila Mutiso v Rose Hellen Wangari Mwangi - Civil Application No. NAI. 251 of 1997; Imperial Bank Limited (In Receivership) & another v Alnashir Popat & 18 others (2018) eKLR.**

The notice of appeal was lodged and duly signed by the Deputy Registrar within the required 14 days of the date of the decision. The applicant had applied for copies of the proceedings and a certified copy of the judgment for purposes of lodging the record of appeal on 31st August, 2018, and copied the letter bespeaking proceedings to the respondent. That was done within the stipulated period of 30 days in accordance with the proviso to **rule 81(1)** of the **Court of Appeal Rules**.

The certificate of delay accounted for the period when the request was made, i.e. 31st August, 2018 to 13th November, 2018, when the applicant was informed that the proceedings were ready for collection. She however filed the instant application on 26th November, 2018,

which period is 13 days after she was notified that the proceedings were ready for collection.

The delay was therefore not inordinate and in any event it has been sufficiently explained. I have also looked at the proposed grounds of appeal and they are not trivial.

In **Imperial Bank Limited (In Receivership) & another v Alnashir Popat & 18 others** (supra), the Court stated that it is not really the role of the single judge to determine definitively the merits of the intended appeal. That is for the full Court if and when it is ultimately presented with the appeal. It is sufficient for purposes of this application that upon perusal of the draft grounds, the intended appeal is *prima facie* arguable. As I have already stated the proposed grounds of appeal are not frivolous.

The application was unopposed and there is no apparent prejudice that would result to the respondents if it is allowed. The intended appeal should be filed within the next thirty **(30) days** from the date hereof. Costs to abide the outcome of the intended appeal.

DATED and delivered at Nairobi this 24th day of May, 2019

M. MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR