



IN THE COURT OF APPEAL

AT NYERI

(CORAM: D. MUSINGA, J.A.(IN CHAMBERS))

CIVIL APPLICATION NO. 55 OF 2017

BETWEEN

STEPHEN GATHUA KIMANI.....APPLICANT

AND

NANCY WANJIRA WARUINGI

T/A PROVIDENCE AUCTIONEERS..... RESPONDENT

(An Application for extension of time for lodging an appeal from the Ruling of the High Court at Nyeri (Mativo, J.) dated 19th February, 2016

in

H.C.C.C No. 142 of 2012)

RULING

1. The applicant, who is acting in person, brought an application seeking extension of time to enable him file an appeal against the ruling of **Mativo, J.** delivered on 19th February, 2016 in an application for review. The applicant also seeks to have the record of appeal that he filed on 22nd July, 2016, **Civil Appeal No. 40 of 2016**, deemed to have been filed on time.
2. In his affidavit in support of the application, the applicant stated that he applied for proceedings and certified copies of the ruling on 19th February, 2016; that the time taken by the court to type and supply the same was 63 working days; and that a certificate of delay was issued to him on 25th May 2016.
3. The applicant further stated that he has been ailing for some time and from 18th to 22nd July, 2016 when he filed the record of appeal, he was unwell, having been diagnosed with diabetes and high blood pressure. He annexed to his affidavit treatment notes and an appointment card issued by the Provincial Hospital in Nyeri.
4. Although the applicant depones that his intended appeal has high chances of success, he did not file any draft memorandum of appeal. He has however availed a copy of the impugned ruling.

5. The respondent did not file a replying affidavit but his advocate, Mr. **Ng'ang'a Munene**, made brief submissions opposing the application. Counsel submitted that the applicant had not demonstrated that his ailment prevented him from filing the appeal in time; that the applicant had not filed a draft memorandum of appeal; and that the applicant had not cited the provisions of law under which his application is brought. He urged the Court to dismiss the application.

6. I have carefully considered the application, the applicant's affidavit and the brief submissions by both parties. The principles that guide this Court in exercising its discretion in an application of this nature are well settled. In **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi, Civil Application Nai No. 251 of 1997**, this Court stated:

“It is now settled that the decision whether or not to extend 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.”

7. Applying the aforesaid principles, I would say that the length of the delay was not inordinate. Although the applicant did not exhibit a copy of the certificate of delay, I have no reason to disbelieve what he has stated in his affidavit, that the certificate was issued to him on 25th May, 2016. The record of appeal ought to have been filed promptly upon receipt of the typed proceedings and the ruling but the same was not filed until 22nd July, 2016. The applicant has indicated that he suffers ill health and from the appointment card and treatment notes that he exhibited, it is clear that he has been seeing a doctor since 2015. In my view therefore, the delay has been well explained.

8. Although the applicant did not file a draft memorandum of appeal, from the contents of paragraphs 10, 11 & 12 of his affidavit and a perusal of the impugned ruling, I do not think that the intended appeal is frivolous.

9. The respondent has not filed any replying affidavit and neither did his advocate submit that his client would suffer any prejudice if this application is granted. In the circumstances, I am inclined to exercise my discretion, as I hereby do, to extend time for filing the memorandum of appeal as sought by the applicant. The record of appeal filed on 22nd July, 2017 is also deemed to have been filed in time. Each party shall bear their own costs of this application.

Dated and delivered at Nyeri this 21st day of February, 2018.

D. MUSINGA

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JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR