



IN THE COURT OF APPEAL

AT NYERI

(CORAM: WAKI, SICHALE & KANTAL, J.J.A.)

CIVIL APPLICATION NO. NYR. 51 OF 2016

BETWEEN

AMOS MURIITHI KARIAMATU..... APPLICANT

AND

MARGARET WAMBUI WAMUGUNDA.....1ST RESPONDENT

JOHN WACHIRA WAMUGUNDA.....2ND RESPONDENT

(An application for extension of time to file Notice of Appeal and Memorandum of Appeal in an intended Appeal from the Judgment delivered by the Environment and Land Court (Ombwayo, J.) dated 25th July, 2014

in

H.C.C.C. No. 55 of 2013)

RULING OF THE COURT

The applicant, Amos Muriithi Kariamatu, applied before a single Judge of this Court under **Rule 4** of our rules for extension of time in which the applicant may file a Notice of Appeal and a Memorandum of Appeal arising from the judgment in Nyeri H.C.C.C. No. 55 of 2013, delivered by **Ombayo, J.** of the Environment and Land Court on 25th July, 2014.

The motion was heard by a single Judge who in a ruling delivered on 31st March, 2017 did not find merit in the application and dismissed it. The applicant has through a letter dated 7th April, 2017 applied under **rule 55 (b)** of the rules for a reference to the Court from that ruling.

We say at the outset that such a reference is not an appeal from the decision of the single Judge.

The reference came up for hearing before us on 23rd April, 2018 and was urged by Mr. Kebuka Wachira, learned counsel for the applicant, but was opposed by the respondents Margaret Wambui Wamugunda and John Wachira Wamugunda who act in person.

According to learned counsel Mr. Kebuka Wachira, the single Judge did not exercise discretion judicially. Learned counsel submitted that the applicant gave reasons for delay and had done his best to come to court. According to counsel the intended appeal has high chances of success and, finally, that there will be no prejudice to the respondents if we allow the reference.

Mr. John Wachira Wamugunda, the 2nd respondent, spoke for himself and the 1st respondent stating that the matter had been before the courts for a long time; that the land in dispute has since been sub-divided and had been developed. He opposed the reference.

We have considered the reference and have perused the ruling of the learned single Judge. The learned Judge reviewed the history of the matter and considered reasons advanced for failure to file on time in accordance with the rules. He recognized that the applicant had at first alleged that neither himself nor his advocate were notified of delivery of judgment and that is why a notice of appeal had not been filed on time. The learned Judge observed that the applicant changed this version of events stating instead that his previous advocates had declined to represent the applicant after delivery of judgment. No documentary evidence was exhibited before the learned Judge to show communication between the applicant and his then advocate showing a breakdown of communication between them where the advocate declined instructions

to represent the applicant. The learned Judge also considered that the applicant had not applied for copies of proceedings; that the applicant applied for review of the judgment of the lower court but which application he later withdrew but which application was not exhibited to the motion. The applicant was given time by the lower court to lodge an appeal but timelines were not met for filing an appeal. The learned Judge recognized that even after proceedings and judgment had been availed to the applicant's current advocates, the appeal was not filed but was followed by an application for an extension of time which was filed 55 days after proceedings and judgment had been availed.

The learned Judge reviewed the principles to be considered for an application under **Rule 4** of our rules for extension of time as set out in the case of **Leo Sila Mutiso vs Rose Hellen Wangari Mwangi Civil Application No. Nai. 251 of 1997 [UR]**. The learned Judge also considered the decisions of Law, J.A., and Madan, J.A., in the case of **Murai vs Wainaina (No. 3) [1982] KLR 33** and **Murai vs Wainaina (No.4) [1982] KLR 38** but was not persuaded that there was any reasonable explanation for delay in either bringing the application for extension of time or filing appeal.

We have reviewed the ruling and cannot discern any error on the part of the learned Judge. He carefully considered all the principles that apply in an application for extension of time and came to the correct decision; that the applicant had not satisfied the principles applicable in law for the extension of time to file a notice of appeal or record of appeal out of time. We are satisfied that the learned Judge did not fall into error and we disagree with the submissions of Mr. Kebuka Wachira, learned counsel for the applicant, that the learned Judge did not exercise his discretion judicially.

The reference has no merit and is hereby dismissed.

The learned Judge ordered that due to the relationship between the parties no order on costs should be made. That is a reasonable order. Let it apply to this reference.

Dated and delivered at Nyeri this 23rd day of May, 2018.

P. N. WAKI

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR