



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: HANNAH OKWENGU, JA. (IN CHAMBERS))

CIVIL APPLICATION NO. 57 OF 2018

BETWEEN

ATODOSIA CHEMOTWO APPLICANT

AND

EMMANUAL POGHISIO RESPONDENT

(Application for extension of time for the filing of a Notice of Appeal out of time from the judgment/decree and or order of **(Njoroge J)** dated 16th January, 2018 *in Kitale Environment & Land Court Misc Civil Application No. 21 Of 2013*)

RULING

The applicant **Atodosia Chemotwo** has moved this Court by way of a Notice of Motion brought under **Rule 4** of the **Court of Appeal Rules**. The applicant seeks to have the time extended to enable him file a notice of appeal and a subsequent record of appeal against the judgment in Kitale Environment and Land Court Misc. Application No. 21 of 2014

In his affidavit sworn in support of the motion, the applicant explains that he has been unwell for a long time since October, 2016 and that is why he was not able to give appropriate instructions to his advocate to file the notice and the record of appeal within time.

Emmanuel Poghisio who is the respondent objects to the applicant's motion. In his replying affidavit sworn on 13th September, 2018, the respondent deposes that the applicant is not deserving of the exercise of this Court's discretion, as he has not explained the delay between 16th January, 2018 and 9th March, 2018 or the period between 9th March, 2018 and 22nd May, 2018 when he made his application.

Further, respondent contends that the applicant has not demonstrated that he has an arguable appeal.

I have considered the applicant's motion. Under Rule 4 of the Court's Rules I do have discretion to extend time. However, that discretion must be exercised judicially.

This means that the applicant must satisfy the Court that the delay was not inordinate, that there was a good reason for the delay and that he has an arguable appeal.

In this matter, the applicant has explained that he has been unwell. He has produced a medical document to support this allegation. That explanation may be acceptable for the delay between 18th January, 2018 when the judgment was delivered and 9th March, 2018 when he explains that he visited his advocate's office and learnt of the judgment.

The delay after that, which is from 9th March, 2018 to 22nd May, 2018, when this application was lodged has not been explained.

In addition, the applicant has not given any indication of the grounds he intends to raise in the appeal such that there is no demonstration that he has an arguable appeal.

In the circumstances. The applicant has failed to provide any justification for the exercise of my discretion in his favour.

Accordingly, I find no merit in the Notice of Motion dated 30th April, 2018. It is accordingly dismissed with costs.

DATED at Eldoret this 18th day of September, 2018.

HANNAH OKWENGU

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JUDGE OF APPEAL.

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

DEPUTY REGISTRAR.