



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, JA (IN CHAMBERS))

CIVIL APPLICATION NO. 78 OF 2014

BETWEEN

DAVID OTEBA OOKO..... APPLICANT

AND

PETER JOE EMONGORRESPONDENT

(An Application for enlargement or extension of time to lodge a Notice of Appeal against the judgment of the High Court of Kenya at Busia (Kibunja, J.) dated 19th June, 2014

in

ELC NO. 101 OF 2013)

RULING

1. This is an application brought principally under Rule 4 of the Court of Appeal Rules for leave to file the notice and record of appeal out of time. The application is based on the grounds that though the applicant instructed his erstwhile counsel to appeal against the judgment in Busia HCC No. 101 of 2013 immediately after its delivery, that counsel did not file the notice of appeal. When, thirty days after that, the applicant realized that his instructions had not been carried out he sought financial assistance from his family members to file this application but that help came about six months thereafter. He contends that he has an arguable appeal and pleads for leave to urge it.
2. Opposing the application Mr. Ikapel, learned counsel for the respondent, submitted that there is no evidence of the applicant having instructed his erstwhile counsel to appeal against the judgment. In the circumstances this application has no merit and should be dismissed with costs. However, if the application is allowed, counsel submitted that that should be on condition that the applicant deposits in court the costs of the litigation in the court below.
3. I have considered the matter. The success of an application such as this is dependent mainly upon a reasonable explanation being given for the delay or failure to appeal in time.
4. In this case the judgment sought to be appealed against was delivered in the presence of the applicant. He immediately instructed his lawyer to appeal. When, after thirty days, he realized that his instructions had not been carried out, he was unable to file this application immediately because he had no money to

pay another lawyer. It is after he obtained financial assistance from his family, about six months later, that he immediately filed this application.

5. I have no reason to doubt that the applicant had financial difficulties which caused the delay in filing of this application. I therefore grant this application and order that the applicant shall file and serve his notice of appeal within fourteen days of the date hereof and thereafter file the record of appeal within the time specified in the Court of Appeal Rules. The costs of this application shall be in the appeal

DATED and delivered at Kisumu this 19th day of March, 2015.

D.K.MARAGA

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JUDGE OF APPEAL

I certify that this is a true copy

of the original.

DEPUTY REGISTRAR