

IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MARAGA, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. 273 OF 2014

BETWEEN

KENYA FOREST SERVICE.....APPLICANT

AND

RUTONGO'T FARM LTD.....RESPONDENT

(An application for Directions and Extension of time in Eldoret Court of Appeal No.17 of 2014)

RULING

1. This is an application for leave to serve both the notice and record of appeal out of time. It is brought under **Rules 4, 42, 77, 79(1) and 90(1) & (2)** of the Court of Appeal Rules.
2. The application also seeks directions that both the notice and record of appeal be served upon the Hon. The Attorney General, as the defender of public interest who at any rate participated in the proceedings in the High Court.
3. The application is based on the ground that though the notice of appeal was filed in court on 4th July 2014, the Deputy Registrar of this court did not endorse it until 14th July, 2014 and by the time counsel for the applicant got it served, the period allowed for service had expired. Counsel for the applicant argued that the failure to service the record of appeal or to serve it in time was because of the respondent's failure to file the notice of address for service.
4. At the hearing of the application before me on 28th May 2015, Prof. Sifuna, learned counsel for the applicant, informed me that both the notice and record of appeal have, though belatedly, been served upon the respondent and that the purpose of the order for extension of time is to validate the late service.
5. The application was not opposed by the Attorney General but it was by the respondent. Mr. Mokuu, learned counsel for the respondent, submitted that this application should be dismissed because it has been overtaken by events. He also argued that no good reason has been given for late service.
6. Having considered the matter, I find that the application has merit. Mr. Mokuu, learned counsel for the respondent, conceded that his firm, which is acting for the respondent, has, to date, not filed the notice of address for service. He further conceded that counsel for the applicant served him with the notice and record of appeal because he appeared for the respondent in the High Court. At any rate both the notice and record of appeal having been served and, I am told, the matter is partly-heard by this Court, the respondent stands to suffer no prejudice. In the circumstances, I allow this application and order that the service of the notice and record of appeal is hereby deemed to have been effected in time. Each party shall bear its own costs of this application.

DATED and delivered at Eldoret this 23rd day of June 2015

D.K. MARAGA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR