



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. 46 OF 2015 (UR 31/2015)

BETWEEN

**MAXWEL GEORGE MURUNGARO MBUGUA
APPLICANT**

AND

HON. ATTORNEY GENERAL RESPONDENT

**(An Application for leave out of time from a Judgment of the High Court of Kenya at Kakamega,
(Dulu, J.) dated 21st March, 2015 and countersigned by (Mrima, J.) on 14th May, 2015**

in

H.C. CONSTITUTIONAL REF. NO. 8 OF 2013

R U L I N G

1. The applicant claims to be among the internally displaced persons (IDP) following the 2007/2008 post-election skirmishes in the country. He further claims that he lost property worthy Kes1,500,000/= in those skirmishes. Later, he does not state say when, the Government undertook to pay each IDP Kes70,000/= but it paid him only Kes10,000/=. His pleas for the balance have not been heeded.
2. The applicant further claimed that despite being certified as one of the IDPs at Vihiga, the Government, in contravention of his constitutional rights, has refused to compensate him. Consequently, on 3rd July 2013, he filed a notice of motion application at Kakamega, which Dulu J took as a constitutional petition, and claimed for compensation in the sum of Kes1,560,000/= being his said loss of Kes1,500,000/= and the said balance of Kes60,000/= the Government had undertaken to pay to him.
3. On 14th May 2015, Dulu J dismissed the petition on two grounds. One, that the applicant did not establish any liability against the Government and secondly that the matter was res judicata, the High Court at Kakamega having dismissed a similar claim by the applicant in HCCC No. 160 of 2010. The applicant has now come to this Court seeking enlargement of time to appeal against that decision.

4. In such applications, the applicant is supposed to give a satisfactory reason for his failure to appeal within the specified period and to also demonstrate that his intended appeal is arguable. He has to satisfy the court on both of these criteria.
5. On the first criterion, the applicant stated in his draft memorandum of appeal and submissions before me that his case was heard on 1st July 2014 and judgment was to be delivered on 9th October 2014 but it was not. His letters complaining about the delay received no response. On 24th August 2015, he rang the Ombudsman who advised him to go to Kakamega High Court as his judgment had been delivered. He went to the High Court at Kakamega the following day, that is on 25th August 2015, and was surprised to find out that judgment had been delivered on 14th May 2015.
6. After obtaining a copy of the judgment and reading it, the applicant decided to appeal against it but by that time the period for filing the appeal had expired hence this application. Taking these factors into account, I find that the applicant has satisfactorily explained his failure to appeal within the stipulated time.
7. On the second criterion, however, a copy of the ruling the applicant wishes to appeal against makes it quite clear that the applicant's claim was dismissed on two ground. One, that the applicant failed to establish that the Government was liable to compensate him. Secondly, that the matter was res judicata. The applicant had filed a similar claim for compensation in Kakamega HCCC No. 160 of 2010 but the same had been dismissed. I have read a copy of the ruling in that case. The applicant's claim therein was dismissed on the same ground that the applicant failed to establish that the Government was liable to compensate him.
8. Having carefully perused this application together with the supporting affidavit and all the attached documents, I cannot see how the applicant is going to surmount these two hurdles. Like in Kakamega HCCC No. 160 of 2010, his claim in the Constitutional Petition giving rise to this application was based on the Government promise to pay each IDP an ex-gratia sum of Kes70,000/=. That promise does not create a cause of action against the Government. Besides that, given the decision in the said Kakamega HCCC No. 160 of 2010, this claim as well as the other one for Kes.1,500,000/= are res judicata.
9. For these reasons, I find that the applicant's intended appeal is not arguable. Consequently, I have no choice but to dismiss this application with no order as to costs.

DATED and delivered at Kisumu this 4th day of November, 2015

D.K. MARAGA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR