



REPUBLIC OF KENYA



KENYA LAW
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Speed Capital Limited v Gathu & another (Environment and Land Miscellaneous Application E030 of 2021) [2023] KEELC 626 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEELC 626 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E030 OF 2021
MN GICHERU, J
JANUARY 31, 2023

BETWEEN

SPEED CAPITAL LIMITED PLAINTIFF

AND

FAITH WANGU GATHU 1ST DEFENDANT

CLEVERLINE AUCTIONEERS LIMITED 2ND DEFENDANT

RULING

1. This ruling is on notice of motion dated October 30, 2020. It seeks the main orders as follows.
 - i. That the Defendant/Applicant be granted leave to appeal out of time against the judgment of Hon M Kasera, delivered on 13/5/2020 in Kajiado CMELC 93 of 2018.
 - ii. That the memorandum of appeal annexed hereto be deemed as duly filed and served.
2. The motion which is brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 50, Rules 5 and 51, Rule 1 *Civil Procedure Rules* and all enabling provisions of law is supported by seven (7) grounds, an affidavit sworn by Jimmy Karebe and about five annexures.

The gist of the above material is that the judgment of the lower court which was to be delivered on 6/11/2019 was not delivered on that date. It was eventually delivered on 13/5/2020 and the Applicant's counsel was not aware of this. It is only on October 16, 2020 when the Applicant learnt the judgment had been delivered without their knowledge or that of their counsel.
3. The Application is unopposed because no replying affidavit has been filed by or on behalf of the Respondents. Counsel for both sides were to file written submissions by December 20, 2022 but as I write this ruling in late January 2023, no submissions have been filed by either party.



4. I have carefully considered the application in its entirety and I find that there is a good reason established by the Applicant for extension of time within which to file an appeal. Failure to serve the Applicant's counsel with the date of the judgment meant that the Applicant could not exercise their right of Appeal within the prescribed period of 30 days.
5. Under Order 50, Rule 6, *Civil Procedure Rules*, I allow the Notice of Motion dated October 30, 2020 and enlarge the time within which to file an appeal by 30 days.

Secondly, I order that the Memorandum of Appeal dated October 30, 2020 be deemed as duly filed and served.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 31ST DAY OF JANUARY, 2023.

M.N. GICHERU

JUDGE

