KENYA LAW
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC MISC CASE NO. 3 OF 2020

JOSHUA KIMATHI GUANTAI..APPLICANT

VERSUS

JOHN MAINGI KIRERA..RESPONDENT

JUDGMENT

1. Before me is a notice of motion brought pursuant to provisions of Section 1A, 1B, 3A and 79 G of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules seeking leave to file an appeal out of time against the Judgement/Decree of the Principal Magistrate Githongo Law Court dated 31.5.2019 in Githongo ELC suit No. 22 of 2017.

2. The applicant contends that he applied for the proceedings within 3 days from the date of delivery of the judgment but despite many follow ups, the said proceedings were not supplied to him. His advocate was only recently supplied with a copy of signed but un-certified judgment only.

3. The respondent has opposed the application averring that the letter requesting for proceedings bears an altered date as the same was received at the registry on 7.7.2019, that the applicant has not demonstrated how he was frustrated at Githongo court in obtaining the proceedings and that the delay of almost a year is unexplained.

4. I have considered all the issues raised herein. **Section 79 (g) of the Civil Procedure Act** provides as follows;

"every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery of a copy of the decree or order:

5. Save for the letter marked "JKG-01", the applicant has not availed any other evidence demonstrating that indeed he made follow ups to get the proceedings. There is nothing to show that he applied for a certificate of delay. Further, all the applicant was required to do in lodging an appeal was to file the memorandum of appeal; See **AIG Insurance Company Limited vs. Michael Okoth (2018)eKLR** which I quoted in **Meru Elc Misc Appl No. 31 of 2018 Genesio Mutwiri Mwereria vs Augustus Kabira M' Muraga.**

6. In the case of **Fahim Yasin Twaha vs Timamy Issa Abdalla & 2 Others [2015] eKLR,** the court had this to say on the issue of extension of time to appeal.

"Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court. A party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court; Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis".

7. Thus extension of time is not a right and a party needs to adequately demonstrate that the court's discretion should be exercised in their favour. I find that the 8 months delay (July 2019 -February 2020) is an inordinate delay which has not been explained satisfactorily. In the circumstances, I find that the application is not merited. The same is dismissed with costs to the respondent.

 DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF DECEMBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Judgment was given via a notice dated 7.12.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Judgment has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE