



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: KOOME, J.A (IN CHAMBERS))**

**CIVIL APPLICATION NO. 91 OF 2020**

**BETWEEN**

**MARINGO K.P. & T.C. ESTATE HOUSE OWNERS ASSOCIATION**

**(MARINGO POSTA ESTATE).....APPLICANT**

**AND**

**BOARD OF TRUSTEES,**

**POSTAL CORPORATION OF KENYA STAFF PENSION SCHEME.....1<sup>ST</sup> RESPONDENT**

**(An application for extension of time to file and serve memorandum and record of appeal**

**against the judgment of the Environment and Land Court at Nairobi (Obaga, J.)**

**dated 30<sup>th</sup> January, 2020 ELC Petition No. 83 of 2018)**

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**RULING**

1. The applicant's members are owners of units in a block of apartments in *Maringo K.P. & T.C.* estate situated on Sectional Title No. **Nairobi/Block 51/84** (previously known as **L.R No. 209/12577**) having purchased the same from the 1<sup>st</sup> respondent. In their view and as they contend, a number of their fundamental rights and freedoms which are protected under the Constitution were violated by the respondents. For instance, they alleged that the 1<sup>st</sup> respondent had failed to, maintain the Estate in a good state of repair; to stop unauthorised construction of structures on the common arrears and pay annual rent arrears to the Ministry of Lands. As for the 2<sup>nd</sup> respondent, their grievance was that it had failed to provide clean water and solid waste management.

2. Consequently, the applicant filed a constitutional petition in the **Environment and Land Court** (ELC) seeking *inter alia* judicial review order by way of an order of *mandamus* against the respondents as well as damages for violation of their rights.

However, **Obaga, J.** in a judgment dated 30<sup>th</sup> January, 2020 dismissed the applicant's petition in the following terms: -

**“The petitioners have failed to demonstrate that the respondents have abdicated their statutory duties as to call for this court to grant orders of mandamus in the manner prayed for.”**

3. Aggrieved with that decision, the applicant evinced its intention to challenge the same in this Court by lodging a Notice of Appeal on 13<sup>th</sup> February, 2020. Nevertheless, it failed to file the appeal within the prescribed timelines. As a result, the applicant filed the current motion before me under **Rule 4** of this Court's Rules.

In a nutshell, the applicant is calling upon this Court to grant it leave to file the record of appeal out of time.

4. The applicant attributed the delay to the Covid - 19 pandemic. In particular, the applicant urged that while it was in the final process of compiling the record of appeal, the first case of Covid-19 in the country was announced by the Ministry of Health. Thereafter, on 15<sup>th</sup> March, 2020 the National Council for Administration of Justice met to deliberate on the implication of the aforementioned announcement. As a safeguard measure, the then Chief Justice announced what the applicant referred to as a judiciary lockdown in compliance with directive issued by the National Emergency & Response Committee. As per the applicant, court activities were scaled down from the 16<sup>th</sup> March, 2020 to not only allow for further consultations but to also prevent the spread of the virus. As such, the applicant was incapable of filing the appeal within time.

5. The applicant also contended that the intended appeal was arguable and it was in the interest of justice for the leave sought to be granted.

6. In line with the Court's Covid - 19 practice Note, hearing of the motion proceeded by way of written submissions filed on behalf of the applicant without its presence or its advocates. There was no response or written submissions by the respondent despite service of the hearing notice.

7. Be that as it may, some of the considerations I should bear in mind in exercising my discretion as invoked by the applicant include the length of the delay; the reason for the delay; the degree of prejudice to the respondents if the application is granted, and, possibly, the chances of the success of the intended appeal should the application be granted. See **David Chege Kiarri vs. Cooperative Bank of Kenya Limited [2021] eKLR.**

8. Pursuant to **Rule 82 (1)** of this Court's Rules, the record of appeal should have been filed within sixty (60) days of lodging the notice of appeal. It follows therefore that the record of appeal ought to have been filed on or before 30<sup>th</sup> March, 2020. It was worth noting that the motion dated 16<sup>th</sup> March, 2020 had been filed before expiry of the aforesaid time frame. Nonetheless, whether or not the delay can be deemed as inordinate is dependent on the reasonableness of explanation given.

9. I take judicial notice that following the announcement of the first case of Covid -19 in the country some of the court processes were halted due to the nature of the disease. At that particular point in time deliberations on the appropriate measures to be taken to combat the spread of the deadly virus were ongoing both by the government and the judiciary. I am therefore inclined to give the applicant the benefit of doubt that it was hindered by the then prevailing circumstances from lodging the record of appeal on time. As a result, I find that the delay was not inordinate.

10. Being cognisant that it is not my place as a single Judge to determine the merit of the intended appeal, I think the issues sought to be raised therein, as set out in the draft memorandum of appeal annexed to the motion, deserve to be canvassed before the Court. I also do not find any prejudice that would be occasioned to the respondent should the current motion succeed.

11. Accordingly, the motion dated 16<sup>th</sup> March, 2020 is hereby allowed with no orders as to costs. The applicant is directed to file the record of appeal within 14 days of this ruling.

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JULY, 2021**

**M. K. KOOME**

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**JUDGE OF APPEAL**

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

**DEPUTY REGIST**



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