



Bluesky Outsourcing Limited v Kamau & 2 others (Miscellaneous Civil Application E174 of 2021) [2022] KEHC 10985 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E174 OF 2021
MM KASANGO, J
JUNE 23, 2022**

BETWEEN

BLUESKY OUTSOURCING LIMITED APPLICANT

AND

JOSEPH MBURU KAMAU & MAGDALINE NJOKI NDUNGU (SUING AS ADMINISTRATORS OF THE ESTATE OF RICHARD KIBINGE KAMAU) 1ST RESPONDENT

JOSEPH MBURU KAMAU & MAGDALINE NJOKI NDUNGU (SUING AS THE ADMINISTRATORS OF THE ESTATE OF ESTHER WAITHIRA KIBINGE) 2ND RESPONDENT

LUCY NYAKIO & MAGDALINE NJOKI NDUNGU (SUING AS THE ADMINISTRATORS OF THE ESTATE OF PETER NDAI KAMAU) 3RD RESPONDENT

RULING

1. Bluesky Outsourcing Limited (the applicant) has moved this court by an application, notice of motion dated August 2, 2021. The applicant seeks for stay of execution of the judgment of Kiambu Chief Magistrate's Court in consolidated Civil Case No. 394 of 2018 and No. 395 of 201; and also seek leave to appeal the said judgment out of time.
2. Section 79G of the *Civil Procedure Act* provides that an appeal from the Magistrate's Court to the High Court should be filed within 30 days of the date of judgment or order. The judgment, the applicant wishes to appeal against was delivered on May 31, 2021. The applicant delayed in filing the appeal by



a period of 2 months and 6 days. The applicant in the affidavit in support of the application stated the following, as the reason for delay in filing the appeal:-

“That delay in considering (sic) this appeal since the date of judgment was inadvertently occasioned by the time taken considering legal opinion from our advocates on record consulting over the same and obtaining administrative approval within our office on whether to settle the matter or proceed on appeal.”

3. One would ask, did the legal opinion that was being considered not state that there is a time limit within which the appeal should be filed? In my view, that deposition fails the test set by the Supreme Court, in extension of time in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* (2014 eKLR, thus

“(1) 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.

(2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.

(3) Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.

(4) Whether there is reasonable reason for the delay. The delay should be explained to the satisfaction of the court.

(5) Whether there will be any prejudice suffered by the respondent of the extension is granted.

(6) Whether the application has been brought without undue delay; and...”

4. The applicants as stated before, failed to shift the burden discussed in the above case to show that the court should exercise its discretion in its favour by permitting it to file the appeal out of time. The deposition reproduced above does not show the reason the applicants failed to file their appeal well after two months after the period such an appeal should have been filed.

5. It is important to state that the respondents to the application did not oppose the application on condition that the applicants would agreeable to deposit the decretal sum was deposited in joint interest earning account. The applicant declined to accept that condition and the parties therefor chose to proceed with the hearing of the present application.

6. As stated before, the Supreme Court stated the standard to be met by an applicant seeking extension of time in the case *Nicholas Kiptoo Arap Korir Salat v Independent Electoral Commission* (*supra*). Not only did the applicants fail to meet those standards but also failed to meet the statutory standards of the proviso of section 79G cap 21, which states:-

“Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

7. To state that the delay to file an appeal was because the applicant’s insurer took that time to consider the advocate’s opinion is not a “good and sufficient cause”. One would expect that the advocate’s opinion contained advice that an appeal needed to be filed within 30 days of the judgment.

8. It is because of the above that the application fails.



Disposition

9. The notice of motion dated August 2, 2021 is dismissed with costs.

10. This file shall henceforth be closed.

RULING DATED AND DELIVERED AT KIAMBU THIS 23RD DAY OF JUNE, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For Applicants : - Mr. Ndiru H/B Mr. Maanzo

For Respondent: N/A

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE

