



REPUBLIC OF KENYA



Molyn Credit Limited v Nderitu & another (Civil Miscellaneous Application 185 of 2020) [2022] KEHC 13001 (KLR) (22 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13001 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL MISCELLANEOUS APPLICATION 185 OF 2020
MM KASANGO, J
SEPTEMBER 22, 2022**

BETWEEN

MOLYN CREDIT LIMITED APPLICANT

AND

CHARLES WAHOME NDERITU 1ST RESPONDENT

JOSRICK MERCHANTS AUCTIONEERS 2ND RESPONDENT

(Being an application for extension of time to lodge an appeal against the judgment of Thika Chief Magistrates Court (Hon. Ekhubi BM, PM) in Civil Case No. 680 of 2013)

RULING

1. For determination in this ruling is the notice of motion dated September 29, 2020. The applicant seeks leave to file an appeal against the judgment of Thika Chief Magistrate's Court Civil Case No 680 of 2013. That judgment was delivered on July 16, 2020. There is delay of filing an appeal of two months. Section 79G of the *Civil Procedure Act* provides the period within which an appeal must be filed. It is in the following terms:-

“Every appeal from a subordinate court to the High Court shall be filed within a period of 30 days from the date of the decree or order appealed against excluding from such period anytime which the lower court may certify as having been requisite for preparation and delivery to the appellant of a copy of the decree or order:-

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.”

2. Without mentioning the name of the advocate, the applicant stated its former advocate on being contacted by the applicant, he, the advocate, informed the applicant that judgment was delivered by the trial court on July 16, 2020. The applicant further stated that the said judgment was supplied to it



on September 14, 2020. Those reasons given by the applicant were further amplified in the applicant's further affidavit.

3. The respondent through its replying affidavit opposed the application on the grounds it was vexatious and an abuse of the court process. The respondent attached to that affidavit evidence of service on the applicant's advocate notifying that advocate that the judgment of the trial court would be delivered on July 16, 2020.

Discussion and Determination

4. The Supreme Court gave guideline on the principles applicable when an application for extension of time is considered. Those guidelines were reproduced in the case of *Mombasa County Government vs. Kenya Ferry Services & Another* (2019) eKLR as follows:-

“25. Concerning extension of time, this court has already set the guiding principles in the Nick Salat case as follows:-

‘... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant.’

... we derive the following as the underlying principles that a court should consider in exercising such discretion:-

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 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. Where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the court;
 5. Whether there will be any prejudice suffered by the respondents, if extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time” [emphasis supplied]
5. Those principles emphasise that extension of time is not a right. The applicant bears the burden to explain the reason for the delay to the satisfaction of the court. My consideration of the reasons given by the applicant, I find they do not satisfy this court. The applicants fail to state when, that is, the date on which it inquired from its advocate about the judgment. The applicant also fails to explain why the judgment delivered on July 16, 2020 was given to it on September 14, 2020. This information is vital to enable this court exercise its discretion, yet it was not availed.



6. In that case of Mombasa county(supra), the Supreme Court was categorical that the delay of obtaining proceedings was not reason enough to grant extension. This is what the Supreme Court stated:-

“26 Further, in the case of *County Executive of Kisumu v County Government Of Kisumu & 8 others*, SC Civil Appl No 3 of 2016; [2017] eKLR, this court emphasized the need for the applicant, in an application for extension of time, to satisfactorily declare and explain the whole period of delay to the court. On the issue of delay occasioned by typed proceedings, we stated as follows:-

‘24 A ground of delay of getting typed proceedings is not a *prima facie* panacea for a case of delay whenever it is pleaded. Each case has to be determined on its own merit and all relevant circumstances considered.’” [emphasis added]

7. The application for the reason set out above does fail.

Disposition

8. The orders in respect tonotice of motiondated September 29, 2020 is as follows:-

- a. The application is dismissed with costs.
- b. This file shall henceforth be closed.

RULING DATED AND DELIVERED AT KIAMBU THIS 22{{ND}} DAY OF SEPTEMBER, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Maurice

For applicant : - Mr. Chege

For 1st Respondent : - Ms. Mugo HB Karanja Kanyiri

RULING delivered virtually.

MARY KASANGO

JUDGE

