



**Ashvin Ramnikai t/a Shvin Ranapara v Paramount Universla Limited (Miscellaneous Application E1259 of 2020) [2022] KEHC 14711 (KLR) (Commercial and Tax) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14711 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E1259 OF 2020**

**EC MWITA, J**

**OCTOBER 28, 2022**

**BETWEEN**

**ASHVIN RAMNIKAI T/A SHVIN RANAPARA ..... APPLICANT**

**AND**

**PARAMOUNT UNIVERSLA LIMITED ..... RESPONDENT**

**RULING**

1. This is a notice of motion dated November 27, 2020 brought under sections 1A, 1B, 3A 79G and 95 of the *Civil Procedure Act* (the Act) and order 50 rule 5 of the *Civil Procedure Rules* (the rules), seeking leave to appeal out of time against the judgement delivered on November 11, 2019.
2. The application is supported by the grounds on the face of the motion and depositions in the affidavit sworn on the same day by Lilian Kiburi, counsel for the applicant. According to the advocate, judgment was to be delivered on November 8, 2019 but their representative who attended court on that day was informed that delivery of the judgment had been postponed. The advocate waited for the court to notify them when next the judgment would be delivered to no avail.
3. Following resumption of work after closure of business due to Covid Pandemic, the advocate followed up the matter with a letter to the court dated September 9, 2020 inquiring about the delivery of the judgment but no response was received from the court. The advocate later received a letter from the respondent's advocate calling on the applicant to pay costs of the suit. That was when the advocate realized that judgment had been delivered without notice to them
4. The advocate then wrote a letter to the court on October 11, 2020 requesting for a certified copy of the judgment and also to the respondent's advocates for a copy too. A reminder was again sent to the court on November 12, 2020 with no positive result. The advocate asserts that they were not aware



that judgment would be delivered on November 11, 2019 and that was the reason for their failure to attend court on that day or file the appeal on time.

5. The respondent filed grounds of opposition dated December 14, 2020 in opposition to the application. The respondent's position is that the application is based on misrepresentation and has no merit, the applicant has no good and sufficient cause for not filing the appeal on time, that any purported appeal would be in breach of the law (section 79G of the Act and that the applicant is guilty of unreasonable delay.
6. I have considered the motion, the supporting affidavit and the response. The application seeks leave to appeal out of time and has been brought under sections 75G and 95 of the Act. The judgment sought to be appealed against was delivered on November 11, 2019, while this application was brought on November 27, 2020.
7. The applicant has urged this court to exercise its discretion and grant leave to appeal out of time because they were not served with notice on the delivery of the judgment. The respondent has opposed the application, arguing that the applicant has not shown good reason why the leave should be granted and that the applicant is guilty of unreasonable delay.
8. The law grants a person aggrieved with judgment of the trial court the right of appeal. Section 65 of the Act allows appeals from subordinate courts to this court while section 79G sets the time within which an appeal to this court should be filed. Section 79G provides:  
  
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 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 in time. (emphasis)
9. It is plain from the language of section 79G that this court has discretion to extend time within which to lodge an appeal where an applicant demonstrates that there was good reason or sufficient cause for not filing the appeal within the time provided. Decisions from superior courts are also clear that the court's discretion to extend time to appeal may be exercised in favour of an applicant where the court is satisfied that it is just to do so. Just like the proviso to section 79G, the decisions emphasize the principle that an applicant must satisfy the court that there was good or sufficient cause for not filing the appeal on time. The court should however exercise its discretion judiciously.
10. The judgment to be impugned was delivered on November 11, 2019. The applicant asserts that the judgment was delivered without notice to its advocate. The advocate tried to get information from the court on the delivery of the judgment through letter dated September 9, 2020 after resumption of business following interruption by the Covid pandemic without success. Shortly after, the applicant's advocate received a letter from the respondent's advocate demanding payment of costs. That was when it dawned on them that judgment had been delivered without their knowledge.
11. The advocate then wrote to court requesting for a copy of the judgment and also to the respondent's counsel but again no response was received. All the while, the time for filing appeal had lapsed.
12. The respondent has not argued that notice for delivery of the judgment was served and if so, when. In other words, the respondent has not argued that parties were notified that the judgment would be delivered on November 11, 2019. The applicant's position that there was no notice on the delivery of judgment has not been controverted.



13. The applicant asserts that their advocate learnt of the judgment in mid-October 2020 and the application was filed in November within a period of one month after learning of the judgment. There can be no argument that the period was not inordinate given the circumstances under which the judgment was delivered. I do not find the delay to be so inordinate as to warrant this court to decline to exercise its wide discretion in favour of extending time for filing the appeal out of time.
14. In *Kenya Power & Lighting Company Ltd v Rose Anyango & another* [2020] eKLR, where judgment was delivered on February 19, 2020 and an application for leave to appeal was filed on April 20, 2020 the court found the delay was not inordinate.
15. I also note that the respondent has not stated what prejudice it will suffer if leave is granted to meet the ends of justice. For that reason, it is my view that the ends of justice would be better served if leave is granted to the applicant to lodge appeal out of time.
16. Consequently, the application dated November 27, 2020 is allowed and I make the following orders.
  - a. Leave is hereby granted to the applicant to file an appeal out of time.
  - b. Memorandum of appeal be filed and served within fourteen (14) days from the date of this order.
  - c. Costs of the application to abide by the result of the intended appeal.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF OCTOBER, 2022**

**E C MWITA**

**JUDGE**

