



**Sukari Industries Company Limited v Okecha (Civil Appeal
11 of 2019) [2022] KEHC 15821 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15821 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL 11 OF 2019
KW KIARIE, J
NOVEMBER 30, 2022**

BETWEEN

SUKARI INDUSTRIES COMPANY LIMITED APPELLANT

AND

PAMELA AKELO OKECHA RESPONDENT

RULING

1. On December 16, 2021 this court delivered a judgment in this matter in favour of the appellant / respondent herein. The respondent/applicant has applied for leave to appeal out of time by an application dated February 25, 2022.
2. The application is by way of notice of motion pursuant to section 7 of the *appellate Jurisdiction Act*, rules 12 & 42 of the *Court of Appeal Rules*, sections 1A,3A,and 63 (c) of the *Civil Procedure Act*, Order 42 rules 6 & 7 & Order 51 rule 1 of the *Civil Procedure Rules*.
3. The application is premised on grounds that can be summarized as follows:
 - a. That the applicant was unaware that the judgment was delivered on December 16, 2021.
 - b. That the applicant's advocates were unaware that the judgment was delivered on December 16, 2021.
4. The respondent opposed the application and contended that the reasons advanced do not warrant the extension of time.
5. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2015] eKLR identified salient principles to be considered in an application for extension of time. The court expressed itself as follows:



This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a court should consider in exercise of such discretion that:-

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 delay should be explained to the satisfaction of the court;
 5. whether there will be any prejudice suffered by the respondents if the 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.
6. It is erroneous for the applicant's advocates to allege that they were not aware of the judgment date. When this matter came up for mention on October 13, 2021, Mr Kerario Marwa for the respondent/applicant applied for 14 days within which to file their submissions. They were allowed to do so and the matter was fixed for mention to confirm the filing of the submissions on November 9, 2021.
7. When the matter came up for mention on November 9, 2021, Mr Kerario Marwa's brief was held by Mr Ouma who confirmed that both parties had filed submissions. The matter was therefore scheduled for judgment on December 16, 2021. However, on the judgment date advocates for both parties were absent. The court proceeded to deliver judgment.
8. I therefore find that I have not been given sufficient reasons to make me grant the orders sought. The application is therefore dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 30TH DAY OF NOVEMBER, 2022

KIARIE WAWERU KIARIE

JUDGE

