



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL APPEAL CASE NO. 53 OF 2020

PATRICK MUTUNGI.....APPLICANT

VERSUS

AHMED KORE ABDI.....1ST RESPONDENT

BATULA KORE ABDI.....2ND RESPONDENT

RULING

1. The application dated 6th March, 2020 seeks **orders that this honourable court be pleased to extend the time, by forty-five (45) days, within which to put in the Record of Appeal.**
2. The application is premised on the grounds stated therein and the supporting affidavit sworn by counsel for the Applicant. It is stated that on 28th January, 2020, the Applicant was granted orders for stay of execution as a condition for the Memorandum of Appeal be filed within 14 days and the Record of Appeal filed within 45 days of the said ruling. That the certified copies of the proceedings and judgment are yet to be obtained. That follow-ups made with the court registry have not born any fruit. That the Memorandum of Appeal has been filed and the orders made for the filing of the Record of Appeal lapsed on 13th March, 2020. The Applicant is apprehensive that if execution proceeds, his arguable Appeal will be rendered nugatory.
3. The application is opposed. It is stated in the replying affidavit that the Applicant did not follow up on the proceedings and judgment promptly. That no explanation has been given for the delay in following up on the proceedings and judgment. That the Respondents will be prejudiced as they continue to be denied the fruits of their judgment. The court was urged to order the release of half the decretal sum and the deposit of the balance if the application is allowed as no security has been given for the due performance of the decree.
4. I have considered the application, the response to the same and the submissions filed by the respective counsel for the parties.
5. On enlargement of time, the principles applicable were set out by the Supreme Court of Kenya in the **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** 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 under-lying principles that a court should

consider in exercise of 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 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 a 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 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 consideration for extending time.”**

6. The Applicant has exhibited two letters stamped as received in court on 24th February, 2020 and 27th February, 2020 respectively requesting for the certified copies of the proceedings and judgment. It appears there has been no response to the said letters. It is not clear why the Applicant did not apply for the proceedings and judgment immediately after the orders giving her 45 days to file the Record of Appeal were granted. However, it is the responsibility of the court to supply the typed and certified copies of the proceedings and judgment once a request is made. It is today more than ten months since the first request was received in court, yet there is no evidence of supply of the same. In the meantime the COVID 19 pandemic has not made things easier.

7. With the foregoing, this court is inclined to allow the application for the Appeal to be determined on merits. This court is at this stage reluctant to revisit the terms upon which the stay of execution orders were granted.

8. The upshot is that the application is allowed with costs in cause.

Date, signed and delivered at Nairobi this 28th day of Jan., 2021

B. THURANIRA JADEN

JUDGE