



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL MISC APPL. NO. 266 OF 2019**

**KAISA CONSTRUCTION LIMITED.....APPLICANT**

**VERSUS**

**NAIROBI CITY COUNTY.....RESPONDENT**

**RULING**

1. The application dated 18<sup>th</sup> March, 2019 seeks orders **that the honourable court be pleased to deem the Memorandum of Appeal filed herein out of time, against the judgement of the honourable Senior Resident Magistrate D.M. Kivuti delivered on 12<sup>th</sup> February, 2019 in Nairobi Case No. CMCC No. 252 of 2015, as duly filed and served.**
2. Secondly, **that the honourable court be pleased to grant leave to Applicant herein to file its Memorandum of Appeal filed herein against the Judgment of the honourable Senior Resident Magistrate D.M. Kivuti delivered on 12<sup>th</sup> February, 2019 in Nairobi Case No. CMCC No. 252 of 2015, out of time.**
3. The delay in filing the Appeal is blamed on mis-diarization of the judgment date in the Advocate's diary.
4. The application is opposed. It is stated in the grounds of opposition that the application is incompetent, an afterthought, as abuse of the court process and that litigation ought to come to an end.
5. I have considered the application, the response to the same and the submissions filed by the respective counsel for the parties.
6. Section 79 G Civil Procedure Act provides as follows:

**“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 satisfied the court that he had good and sufficient cause for not filing the appeal in time”**

7. 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.”

8. The judgment of the lower court was delivered on 12<sup>th</sup> February, 2019. The application at hand was filed on 20<sup>th</sup> March, 2019. The delay was not inordinate and has been explained.

9. With the foregoing, I allow the application with costs to the Respondent. The court fees for the filing of the Appeal to be paid within 14 days from the date hereof.

**Dated, signed and delivered at Nairobi this 25<sup>th</sup> day of June, 2020**

**B.THURANIRA JADEN**

**JUDGE**