



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL CASE NO. 82 OF 2019

HON. ATTORNEY GENERALAPPLICANT

-VERSUS-

FANUEL INZIRA MISANGO.....RESPONDENT

RULING

The application dated 16th May 2019 is for leave to lodge an appeal out of time.

1. The grounds upon which the application is premised are as follows;

“(a) THAT the Applicant has an arguable appeal with a high probability of success.

(b) THAT the Application has been brought without unreasonable delay and the Respondent will suffer no prejudice in the event that the application is granted.

(c) THAT it is in the best interest of Justice that the application be allowed.

(d) THAT the Appeal raises very serious issues Law and Facts.

(e) THAT the delay in filing the Appeal was occasioned by the late transmission of communication of Judgment from the Advocate to the Client and transmission of instructions from the Client to the Advocate.”

2. It is common ground that the Judgment in respect to which the Applicant has sought leave to appeal, was delivered on 14th October 2014.

3. Through her supporting affidavit **Ms LORNA OREGA**, a practicing State Counsel at the Office of the **ATTORNEY GENERAL**, deponed that her colleague who had been handling the case, had written to the Deputy Chief Litigation Counsel, advising him about the Judgment, by a letter dated 27th November 2017.

4. Assuming that the Attorney General had not become aware of the Judgment until he got the letter dated 27th November 2017, that would imply that the State Counsel failed to notify his Client about the Judgment for a period of more than 3 years!

5. However, from the Replying Affidavit sworn by the Respondent, there is a letter dated 24th July 2015, which the Respondent's Advocates, Messrs Shitsama & Company Advocates wrote to the Applicant, notifying him about the Quantum awarded as Special Damages, as well as the Quantum of the Costs of the suit.

6. It is notable that the Applicant did not deny the Respondent's contention, that the letter dated 24th July 2015 was dispatched to him.

7. I therefore find that the Respondent wrote to the Applicant on 24th July 2015, providing him with information concerning the sums payable by the Applicant, to settle the decretal amount and costs.

8. In effect, even if the Applicant's advocate had delayed in notifying the Applicant about the judgment, the information concerning the judgment was relayed to the Applicant by the Respondent's advocates.

9. I further find that on 20th May 2016, the Applicant was served with the application dated 23rd March 2016, which had been filed in High Court Misc. Civil Application No. 50/2016.

10. The application dated 23rd March 2016 was seeking leave to the Respondent herein to commence proceedings against the Permanent Secretary, Ministry of Tourism, with a view to compelling him to settle the Decree in **NYANDO SPMCC NO. 184 OF 2013**.

11. Upon receipt of service of the application dated 23rd March 2016, the Provincial Litigation Counsel, Kisumu, endorsed it with the remarks

“Received under protest

Time is short.”

12. From a factual perspective, I find that it was incorrect for the Applicant to assert that he was not aware of the judgment delivered by the Magistrate’s Court until November 2017.

13. I appreciate that Government entities often run foul of rigid beaurocratic procedures, which result in less than efficient action.

14. However, the Government entities cannot simply be allowed to work at their own pace, because they are unlike private institutions or natural persons.

15. Public bodies must demonstrate, to the satisfaction of the court, that they have done their best, within their circumstances.

16. In this case, the Applicant did not state the specific date when the State Counsel who had been handling the case, was first notified about the Judgment.

17. Secondly, it has not been explained why the said State Counsel only wrote to the Deputy Chief Litigation Counsel on 27th November 2017.

18. But even if the Court were to accept that the Applicant did not know about the Judgment until 27th November 2017, the Applicant has not provided any reasonable explanation why he waited until 16th May 2019, to seek leave of the Court to file an appeal out of time.

19. I find that the application before me has been brought after a period of inordinate delay.

20. I further find that the Applicant failed to provide reasonable explanations for the delay between 14th October 2014 and 27th November 2017; as well as the delay between 27th November 2017 and 16th May 2019.

21. The Respondent has already commenced proceedings for the enforcement of the Judgment.

22. There is no reasonable justification in putting a hurdle in the Respondent’s path, which is intended to transform the Judgment into a tangible benefit to the Respondent.

23. After waiting for a considerable length of time, to receive the fruits of the Judgment, during which period the Applicant severally indicated an intention to remit payment, I find that the Respondent would be seriously prejudiced if he were to be kept waiting for longer, because the Applicant had now changed his mind and wished to kick-off the appeal process.

24. In the result, I find no merit in the application, and it is therefore dismissed.

25. The Applicant will pay to the Respondent, the costs of the application dated 16th May 2019.

DATED, SIGNED and DELIVERED at KISUMU

This 17th day of **December** 2019

FRED A. OCHIENG

JUDGE