

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 86 OF 2017

RIFT VALLEY RAILWAYS.....APPELLANT

VERSUS

JACKLINE AKECH APINDE.....RESPONDENT

RULING

1. The application dated 10th March, 2017 seeks orders that the Honourable court be pleased to extend time for filing Appeal and that the Appeal filed on the 6th March 2017 be deemed properly filed and served within time.
2. It is stated in the affidavit in support of the application that there was delay in instructing the advocate due to an oversight.
3. The application is opposed. It is stated in the replying affidavit that the delay has not been explained. That no substantial loss would be suffered by the Applicant if the application is not allowed. It is contended that granting the orders will delay the Respondent from enjoying the fruits of her judgment and that the appeal has no chances of success.
4. The appeal was canvassed by way of written submissions. I have considered the application. The reply to the same and the written submissions.
5. Section 79G of the Civil Procedure Act provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of 30 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.”

(See also Section 59 of the Interpretation and General Provisions Act and Order 50 rule 6 Civil Procedure Rules and Section 3A Section 95 of Civil Procedure Act Cap 21 Laws of Kenya)

6. The court therefore has the discretion to extend time within which to file an Appeal. As stated by the Court of Appeal in the case of **Aviation Cargo Limited v St. Mark Freight Services Limited [2014] eKLR**:

“...whether or not to grant extension of time or leave to file and serve record of appeal out of time is discretionary. Such discretion is exercised judicially with a view to doing justice. Each case depends on its own merit. For the Court to exercise its discretion in favour of an applicant, the latter must demonstrate to the Court that the delay in lodging the record of appeal is not inordinate and where it is inordinate the applicant must give plausible explanation to the satisfaction of the Court why it occurred and what steps the applicant took to ensure that it came to Court as soon as was practicable. In the normal vicissitudes of life, deadlines will be missed even by those who are knowledgeable and zealous. The Courts are not blind to this fact. When this happens, the reason why it occurred should be explained satisfactorily including the steps taken to ensure compliance with the law by coming to Court to seek extension of time or leave to file out of time.”

7. The instant application was filed on 14th March, 2017. The judgment of the Lower Court was delivered on 20th January, 2017. The delay was for about one week. The delay is not inordinate and has been explained. I allow the application with costs to the Respondent.

Dated, signed and delivered at Nairobi this 27th day of March, 2018

B. THURANIRA JADEN

JUDGE