



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS APPLICATION NO. 309 OF 2017

BRIAN ODHIAMBO OLUOCH.....PROPOSED APPELLANT

VERSUS

STANDARD CHARTERED BANK LIMITED....PROPOSED RESPONDENT

RULING

The proposed Appellant has moved this Court vide a Notice of Motion dated 26th July, 2017 seeking leave to appeal out of time against the whole judgement of Honourable Justice Njuguna delivered on 2nd March, 2017 and the Court to deem the Notice of Appeal and the Memorandum of Appeal as duly filed and served. This application is brought under the provisions of section 3A, 79G and section 95 of the Civil Procedure Act. It is premised on the grounds stated on the face of the Application as well as on the Supporting Affidavit of **BRIAN ODHIAMBO OLUOCH**, the Proposed Appellant.

The deponent avers that the reason why he was not able to file the appeal in time is because he requested for a copy of the typed judgment and he believed that he would obtain the same within a week or two weeks which was not the case. That up to date he has never received the said judgement but he has decided to appeal anyway.

The Respondent opposed the application and filed grounds of opposition dated 23rd August, 2017. It is averred that the delay of over 4 months is excessive and the proposed appellant has not offered any explanation for the delay. That a copy of the judgment was readily available at the registry and there is no evidence that the proposed Appellant requested for its copy and proceedings. The Respondent also contends that the High Court does not have jurisdiction to deem a Notice of Appeal or Memorandum of Appeal as filed.

The court has considered the application and the submissions made by the respective parties. The applicant has moved this court under sections 3A, 79G and 95 of the Civil Procedure Act. Section 79G applies when a party is filing an Appeal from the subordinate court which gives the High court discretion to extend time within which to file the Appeal.

The relevant provision under which the Applicant ought to have moved the court is section 7 of the appellant jurisdiction Act, Cap 9 laws of Kenya. Under the said section, the High court has jurisdiction to extend time for giving notice of intention to Appeal from its Judgment or making an application for leave to appeal or for a certificate that the case is for Appeal notwithstanding that the time for making such appeal may have already expired.

My understanding of that section is that the High court' s jurisdiction is limited to extending time for filling notice of intention to appeal and for leave to appeal. The rest of the jurisdiction is reserved for the

court of Appeal under rule 4 of the court of Appeal Rules which provides as follows;

“The court may on such terms as it thinks just, by order extend the time limited by any of these rules, or by decision of the court or for a superior court, for the doing of any act, authorized or required by these rules, whether before or after the doing of the act, and a reference in those rules to any such time shall be construed as a reference to that time as extended”

Under the Appellate Jurisdiction Act, the court is defined to mean court of Appeal.

It therefore follows that the only jurisdiction the High court has, is that set out in section 7 of the Act. In my considered view, it has no jurisdiction to grant leave to appeal out of time against its own Judgment but it can extend time for filing notice of intention to Appeal. However, the word used therein is “may” which means, it is within the discretion of the court to grant the leave. For the court to exercise the discretion, the applicant has to satisfy the court as to the reasons why the Notice was not filed within the stipulated time, in this case, fourteen days provided for under Rule 75 of the court of Appeal Rules.

The reason given by the Applicant for not filling the notice on time is the delay in obtaining a copy of the Judgment and proceedings which was caused by administrative difficulties. The Respondent has submitted that a copy of the Judgment was readily available in the registry. As for the proceedings, the Respondent averred that there is no evidence produced by the Appellant to proof that he applied for certified copies of the same.

The court takes judicial notice of the fact that, it delivered its Judgment when it was fully typed and the same was readily available to any party wishing to have a copy of the same. The court has also noted that no receipt and/or no evidence has been availed by the Applicant to proof that he applied for a certified copy of the proceedings. And in any event, the Appellant did not require a copy of the Judgment to file a Notice of Appeal.

Having said that, I find that the delay in filling the Notice of Appeal has not been explained and in the premises the application dated 26th July 2017 is hereby dismissed with costs.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 29th Day of November, 2017.

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L. NJUGUNA

JUDGE

In the Presence of

..... For the Proposed Appellant

..... For the Proposed Respondent