

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NUMBER 16 OF 2016

CHINA JIANGXI INTERNATIONAL (K) LTDAPPELLANT

VERSUS

JOHANNES MBUGUA MUCHUKU.....RESPONDENT

RULING

1. The appellant filed the application before the court on the 23rd March 2016 – under the provisions of **Order 50 Rule 4 and 5 of the Civil Procedure Rules and Sections 3A and 95 of the Civil Procedure Act**. The applicant seeks leave to file his Memorandum of Appeal out of time from the trial courts judgment delivered on the 29th January 2015 in **Nyahururu PMCC No. 20 of 2014**.

In the certificate of delay filed with the application, it is certified that the applicant applied for proceedings on the 29th January 2015 which was within the 30 days of the ruling desired to be appealed against. The Executive Officer of the trial court notified the applicant on the 16th November 2015 that the proceedings were ready for collection and on the 17th November 2015, the proceedings were collected. The certificate of delay shows that the time taken to prepare and supply the proceedings was 292 days. The said certificate was issued on the 18th November 2015 upon which the applicant prepared a Record of Appeal on the 15th February 2016 and the current application for leave for extension of time on the 23rd March 2016.

He therefore seeks leave of the court to file the Appeal out of time due to the delay.

2. In opposing the application the Respondent states that there has been inordinate delay in bringing the application which is not explained. He further states that the applicant has made part payment of the decretal sum with a balance of only Kshs.14,000/= which was costs awarded to the respondent. It is urged that the application be dismissed as an abuse of court and for being filed under wrong provisions of the law.

3. I have considered the application.

Article 159(2) (d) of the Constitution enjoins the court to dispense justice without undue procedural technicalities. The applicant, a layman cited the wrong provisions of the law. I also note that the applicant obtained a certificate of delay and therefore the delay is well explained as to why the appeal could not be filed on time. I have looked at the Record of Appeal and the Memorandum of Appeal as filed.

The relevant provisions under which the application ought to have been brought under is **Section 79G of the Civil Procedure Act**. It provides that an appeal may be admitted out time if the court is satisfied that there is good and sufficient cause for not filing the same in time.

Where the delay is sufficiently explained, the court may admit the appeal out of time. See **Miscellaneous Application No. NAI 98 of 2013 Aviation Cargo Support Ltd -vs- Mark Freight Services Ltd (2014) e KLR** and **Christopher Mugo Kimotho -vs- A.G Civil Appeal No. 131 of 2008**.

4. I am satisfied that there are good and sufficient reasons for the delay and that the order if granted will

not prejudice the respondent in any way as substantial part of its costs have already been paid.

A party who wishes to be heard by the court ought not be shut out due to technical and explainable procedural flaws. I shall allow the application. The draft Record of Appeal and Memorandum of Appeal are deemed duly filed within time subject to payment of the requisite court fees within 10 days of this ruling.

Dated, signed and delivered in open court this 22nd day of September 2016

JANET MULWA

JUDGE