

(ii) *It is incompetent, misconceived;*

(iii) *The application is an afterthought, frivolous, vexatious and an abuse of the process of court.*

6. The 2nd respondent lodged 5 grounds to oppose the application on 25th October, 2015. The grounds are:-

(i) *The application is vexatious and an abuse of court process;*

(ii) *It is filed in bad faith;*

(iii) *It is an afterthought;*

(iv) *The facts in which it is based are untrue.*

7. Mr. Osango for the applicant in his submissions urged court to apply the ruling herein in CMCC No. 466/016 as in the case of the ruling of 22nd September, 2016. He reiterated the grounds in the application and the supporting affidavit.

8. Mr. Maganga opposed the application and relied on the grounds filed in court by the 1st respondent. He reiterated the same in his submissions.

9. Mr. Luyali, on behalf of the 2nd respondent also opposed application and relied on grounds filed and reiterated same in the oral submissions.

Issues analysis and determination

10. The court has gone through the content of the application, supporting affidavits, filed grounds of opposition and the submissions by the parties' advocate.

The issues arising are;

Whether the applicant has demonstrated the grounds for grant of the orders sought?

What is the order as to costs?

11. As regards extension of time, it was held in **NICHOLAS KIPTOO ARAP KORIR SALAT VS. THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & 7 OTHERS [2014] eKLR:-**

"..... It is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant."

We derive the following as the underlying principles that a court should consider in exercising such discretion:-

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;

A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court;

Whether the court should exercise the discretion to extend time, is a consideration to be made on

a case-to-case basis;

Where there is a reasonable [cause] for the delay, the same should be expressed to the satisfaction of the court;

Whether there would be any prejudice suffered by the respondent, if extension is granted;

Whether the application has been brought without undue delay; and

Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

12. The respondents did not file any affidavits to challenge the facts deponed to in the supporting affidavit. The principal facts supporting the application are set out in paragraph 3, 4 and 5 of the supporting affidavit. The applicant depones that the judgment was delivered on 27th July, 2016.

13. Proceedings and judgment were applied on 1st August, 2016. The same were supplied on 23rd September, 2016. Annexures have been attached to support the averment. The above facts have not been rebutted.

14. The instant application was filed on 19th October, 2016 less than a month from the date the proceedings were supplied. Already the 1st respondent/appellant has lodged appeal after grant of leave by this court on 22nd September, 2016. The applicant is a party thereto and thus will be allowed to participate in the same appeals.

15. There is no prejudice in him loading his appeal thereon to agitate the same together with the other parties. None of the parties has shown what prejudice they would suffer if orders sought are granted. However, the applicant has not shown why he took 23rd September, 2016 to 19th October, 2016 to file the instant application. The court will thus grant a conditional order.

1. Leave is granted and the appeal to be filed and served within 14 days;

2. Each of the respondents will be paid Ksh. 5,000/= to cover their costs in both applications in this file and HC MISC. 466/2016;

3. Orders herein to apply in HC. MISC. 466/2016.

SIGNED, DATED and DELIVERED this 13TH day of **DECEMBER** 2016.

C. KARIUKI.

JUDGE.

In the presence of:-

Osango for App.for the Appellant.

Tarus for Maganga for the 1st Respondent.

N/A for the 2nd respondent.

Anunda Court Assistant.

