

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 155 OF 2015

1. RICHARD ODONGO GOWI
2. HUAWEI TECHNOLOGIES (K) CO. LIMITED.....APPLICANTS

VERSUS

1. HEADLINK PUBLISHERS LIMITED
2. MO PRINTERS.....RESPONDENTS

RULING

1. The application is based on the grounds set out on the face of the application and the supporting affidavit of the 1st Ap
2. The Applicants brought the motion dated 23rd April, 2015 under Section 1A, 1B, 3 & 3A of the Civil Procedure Act and Order 50. They seek that the service of this application be made by way of registered post and that they be granted leave to file this suit out of time.
3. Applicant. He stated that the effort to locate the physical location of the Respondents for purposes of service has been in vain. That the addresses of the Respondents as indicated in their newspaper has turned out to be fictitious. That even the efforts to obtain the particulars of the Respondents' Directors has yielded no positive results. He further stated that the statutory period for filing this suit expired on 13th July, 2014. That for the aforesaid reasons there is need for the grant of the orders sought.
4. The decision whether or not to extend time is discretionary. It was conceded that the statutory period within which this suit ought to have been filed lapsed on 13th July, 2014. This application was filed on 23rd April, 2014. That is about 10 months delay in filing this application. However, in determining the issue of delay, the courts' main concern is not how much time has lapsed after the prescribed time, rather whether or not even with the delay justice can be done. See **Utalii Transport Company Limited & 3 Others v. NIC Bank Limited & Another [2014] eKLR** where he stated as follows:-

“Whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable. On applying court’s mind on the delay, caution is advised for courts not to take the word ‘inordinate’ in its dictionary meaning, but in the sense of excessive as compared to normality.” (emphasis own)

4. Fortified by the pronouncement in **Utalii Transport Company Limited** (supra), it is my considered view that the delay herein is unlikely to prejudice the Respondents in a manner that cannot be compensated with costs. The ground seeking extension of time therefore succeeds.
5. The second issue is for service by way of registered post. The Applicants have demonstrated their attempts to serve the Respondents which attempts hit a snag. Order 5 of the Civil Procedure Rules provides for alternative way of service by registered post in instances such as this. Order 5 rule 17 (1) specifically states as follows:-

“Where the court is satisfied that for any reason the summons cannot be served in

accordance with any of the preceding rules of this Order, the court may on application order the summons to be served by affixing a copy thereof in some conspicuous place in the courthouse, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit."

6. In view of the foregoing I find merit in this application and I allow it. Costs shall be in the cause.

Dated, Signed and Delivered in open court this 30th day of July, 2015.

J. K. SERGON

JUDGE

In the presence of:

.....for the Applicants.