

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISC. APPLICATION NO. 59 OF 2010

AGGREY O. OBARE APPLICANT

V E R S U S

TELKOM KENYA LIMITED RESPONDENT

R U L I N G

On 20th August 2010, a suit in which the applicant had filed against the respondent was dismissed with costs to the respondent. In the suit, the applicant had sought to be paid some benefits after his dismissal from employment. On 1st December, 2010 the applicant filed an application pursuant to Order XLIX (now Order 50) Rule 6 of the Civil Procedure Rules. In the application, the applicant seeks leave of this court to file appeal out of time. The ground in support of the application were that the applicant was prevented from filing the appeal in time because he was awaiting proceedings from the subordinate court to enable his advocate lodge an appeal. The application is opposed. Lucy Barno, the Senior Legal Advisor of the respondent swore a replying affidavit in opposition to the application. In the said affidavit, she deponed that the applicant was guilty of laches in that he had obtained proceedings from the subordinate court on 30th August 2010 which was within the period that the applicant was required to have filed an appeal.

At the hearing of the application, this court heard oral submissions made by Mr. Onsando for the applicant and by Miss Kosgei for the respondent. I have carefully considered the said submissions. The issue for determination by this court is whether the applicant has put forward a case to entitle this court exercise its discretion in his favour and extend time for the applicant to file appeal out of time. Under Order 50 Rule 6 of the Civil Procedure Rules this court has jurisdiction to enlarge time for anything to be done under the Civil Procedure Act provided that the justice of the case requires. In the present application, although the proceedings were ready on 30th August 2010, (within the period in which the applicant would have lodged the appeal) the applicant did not present the present application to this court until three months later i.e. on 1st December 2010. The applicant did not give a cogent reason for this delay. It is clear that the applicant was indolent. He is guilty of laches. This court cannot exercise its discretion in favour of such indolent litigant. The justice of this case demands that this court declines to exercise its discretion in favour of the applicant. The reasons advanced for seeking enlargement of time are not valid.

For the above reasons, the applicant's application filed in court on 1st December 2010 is hereby dismissed with costs to the respondent.

DATED AT KAKAMEGA THIS 31ST DAY OF MAY 2011

**L. KIMARU
J U D G E**