



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MISC. APPLICATION NO. 414 OF 2011

BENSON WANDERA NYONGESA

..... APPLICANT

VERSUS

STEEL PLUS LIMITED RESPONDENT

RULING

Application For Leave To File Appeal Out Of Time

I. BACKGROUND

1. The original court case arose out of a claim for damages in an industrial accident case filed by the applicant/employee herein. The applicant alleged that he had been hit by a metal object in the cause of his employment with the respondent. The trial magistrate in her judgment held that no breach of duty was to be found with the employer. The suit was dismissed and the possible award to be made was placed at Ksh. 40,000/= in general damages by the Hon. Trial Magistrate on

3rd June 2011.

2. The employee was not aware of this judgment. Time to file an appeal had lapsed. By an application of 27th September 2011, the appellant filed an application to file appeal out of time.

II APPLICATION DATED 27TH SEPTEMBER 2011

3. The reasons why the application to file appeal out of time was made is that after the parties had agreed on liability of 80%:20% ratio, it was the issue of quantum that had been left. After trial, judgment was to be delivered. This was not done until 12 months had elapsed and without notice to the appellant.

4. The applicant came aware of the delivery of the judgment (having been delivered on 3rd June 2011) on 10th June 2011. He requested for the proceedings and judgment which was not availed until

August 2011. A certificate of delay was issued by the courts between 28th June 2011 and 2nd August 2011.

5. The appellant prayed for leave to appeal out of time.

6. The respondent's advocates were served and are absent. No grounds of opposition and on replying affidavit had been filed.

III FINDINGS

7. The applicant has demonstrated that there was judgment already entered in his favour on liability. The issue of quantum was dismissed. He wishes to appeal but was not able to do so as he was never informed of the date of judgment.

8. I would find that the application was not brought with undue delay. A certificate of delay has been supplied with the application from the court.

9. The application for leave to appeal out of time dated 27th September 2011 be and is hereby allowed. An appeal be filed and notice of memorandum of appeal be filed and served upon the respondent within 14 days.

DATED THIS 19TH DAY OF OCTOBER 2011 AT NAIROBI

M.A. ANG'AWA
JUDGE

Advocates :

iii) N.A Owino instructed by M/s N.Owino & Co advocates for the appellant

iv) Non appearance for the respondent