



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Civil Case 453 of 2007

MONICAH W. PETER.....PLAINTIFF

VERSUS

THE ATTORNEY GENERAL.....DEFENDANT

RULING

The applicant moved to this Court by way of an application dated 16th July 2007 and filed on 17th July 2007 seeking leave to file an appeal out of time against the judgement delivered on the 14th day of July 2005 at Milimani Commercial Court Nairobi in PMCC No 10049 2003, and that cost be in cause.

The grounds in support are set out in the body of the application supporting affidavit and oral submissions in court. These are:

- Judgment was delivered on 14/7/05
- Applicant applied for copies of Judgment and proceedings on 22/7/05 and the application was received in court on 29th July 2006.
- These were received by the applicant counsel on 8th September 2006.
- The certificate of delay was prepared by the court on 25th September 2006.
- That the application for leave is dated 16th July 2007 and filed on 18th July 2007.
- That the delay in presenting the same was due to the fact that she had to look for funds to enable present the application and the appeal.
- That the delay is excusable as the same was beyond her control.

The Counsel for the respondent filed no opposition to the application but asked the court for note that there was a delay of 8 months from the date the certificate of delay was given to the date of presentation of the application for leave. To them the said delay is inordinate.

Due consideration has been given to the Rival arguments herein and the same considered in the light of the powers donated to this court by the provision of order 49 rule 5 Civil Procedure Rules and Section 79G of the Civil Procedure Act which provision bestows upon this court of discretionary power either to enlarge the time or not to enlarge the same. Like all judicial discretions that this court has judicial notice

of the donated power has to be exercised Judiciously and with a reason.

By virtue of the Respondent choosing not to oppose the applicant's application for leave to appeal out of time, it means they too recognized applicants undoubted right to the exercise of his rights to appeal and seek as second opinion on the matter affecting her employments rights. Their quarrel is over the delay in presenting the application after she was given the certificate of delay. The court agrees that indeed from September 2006 when the certificate of delay was presented to July 2007 when the application for leave was presented qualifies to be termed as inordinate delay. As such it calls for reasonable explanation to warrant it being excused. The reason given was lack of finance.

The court has considered this in the light of the judgment sought to be appealed against and find that it concerned loss of employment. It is therefore possible that the lack of funds to present the application and appeal is genuine. The explanation is therefore reasonable and therefore excusable.

For this reason the applicant and has earned his leave to file an appeal out of time. The application dated 16th July 2007 and filed on 18th July 2007 has merit. Prayer 1 thereof is allowed on the following terms.

- (1) The applicant has 30 days from the date of reading of this ruling to file an appeal out of time.
- (2) Costs in the cause.

Dated, read and delivered at Nairobi this 31st day of October 2008.

R.N.NAMBUYE

JUDGE