



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Misc. Civ. Appli. 290 of 2008

FRED WAFULA 1ST DEFENDANT/APPLICANT

KEN-KNIT (K) LIMITED 2ND DEFENDANT/APPLICANT

VERSUS

FAUSTINE IVELIA NAMUNYU PLAINTIFF/RESPONDENT

R U L I N G

This is an application by the Applicants for leave to file an appeal out of time. Judgement in Eldoret SPMCC No. 121 of 2006 was delivered on 3.4.2008.

Counsel for the applicant swore an affidavit that the Applicants instructed their firm to lodge an appeal.

That the delay in filing the Memorandum of Appeal was occasioned by the reason that their client's insurer were still verifying from their insured whether the Plaintiff was a bona fide employer. That by the time they confirmed that the Plaintiff was not a bona fide employee of the Defendant Company the time limit within which to file an appeal had lapsed on 3.5.2008.

This application was filed on 26th May, 2008.

The application was opposed and the Respondent filed a Replying Affidavit sworn by his Counsel. They claim that the cause of action herein was a road traffic accident and therefore the issue of whether the Plaintiff was an employee does not arise.

I have considered the application and affidavit. The application was brought promptly in my view. I have not seen the pleadings to ascertain the nature of the cause of action. It is probably true that this was running down matter. However, it is not clear the nature of the insurance cover in this matter. Annexure of the pleadings would have assisted together with the insurance policy. This would have thrown light as to whether the question of employment of the claimant would affect the insurance cover.

In any case the Applicant explains that the delay in filing the memorandum of appeal was caused by its Insurance Company. The Insurance Company is not a party herein.

I think that the Applicant has given a reasonable explanation for the delay in filing the appeal. This was caused by the time it took its insurers to instruct Counsel to file an appeal.

I do hereby allow the application with costs to the Respondent. The Appeal shall be filed within fourteen (14) days.

DATED AND DELIVERED AT ELDORET ON THIS 10TH DAY OF DECEMBER, 2008.

M. K. IBRAHIM

JUDGE

In the presence of:-

Mr. Nabasenge for the Defendant/Applicant

Mr. Kasavuli for the Plaintiff/Respondent