



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 193 OF 2007

CANON ASSURANCE (K) LIMITED.....PLAINTIFF

VERSUS

THE ORIENT INSURANCE AGENCIES LIMITED.....DEFENDANT

R U L I N G

1. By a Motion on Notice dated 16/7/2020 brought under *sections 1A, 1B and 3A of the Civil Procedure Act and Orders 50 Rule 6 and 51 Rules 4 and 10 of the Civil Procedure Rules*, the plaintiff has sought that there be extension of time for the filing of a Notice of Appeal against the judgment made herein on 30/6/2020.
2. The grounds upon which the application was predicated upon were set out in the body of the Motion and the supporting affidavit of **Elizabeth Ngonde** sworn on 16/7/2020.
3. These grounds were that; the impugned judgment was delivered without notice to the parties, that she only became aware that judgment had been delivered after the court notified her via email on 6/7/2020. That the plaintiff was dissatisfied with the judgment and needed to appeal against the same.
4. That she encountered challenges when attempting to lodge the Notice of Appeal after she was notified of the judgment. She further deposed that the intended appeal is arguable and that the application had been brought timeously and in good faith.
5. Although the defendant was served with the application, it never filed any pleading in response thereto. The application was therefore unopposed. I have considered the record and the deposition by **Elizabeth Ngonde**.
6. Although the application was not opposed, the plaintiff must satisfy the Court that it is deserving the exercise of the discretion of the Court. I note that the plaintiff failed to properly invoke the jurisdiction of this Court to extend time for the filing of a Notice of Appeal to the Court of Appeal. The provisions of the law cited do not confer this Court with any jurisdiction to grant the order sought.
7. Be that as it may, this Court will overlook that oversight and nevertheless determine the matter on merit. Since the Court knows that the said jurisdiction exists under *section 7 of the Appellate Jurisdiction Act, Cap 9 of the Laws of Kenya*, the Court will proceed to exercise that jurisdiction.
8. The principles applicable are, the length of the delay, if any, the reason for the delay and the prejudice to be suffered by the opposite party. On the first principle, the judgment is said to have been delivered without notice to the parties. That may have been an oversight on the part of the Court as *Order 22 of the Civil Procedure Rules* require that if a judgment or ruling is not delivered at once, notice of such delivery should be given to the parties.
9. In the present case, since that deposition was not denied, it gives the plaintiff the right in limine to apply for the extension. The judgment was delivered on 30/6/2020. The plaintiff's advocates were notified of the same on 6/7/2020. There was 8 more days to lodge the Notice of Appeal. The said advocates had to notify their client and take instructions thereon. The present application was filed on 16/7/2020. The last day to file the appeal was 14/7/2020. The present application was lodged on 16/7/2020, barely two days out of time. The delay was not inordinate.
10. As for the reason for the delay, I have already made a finding that the error was on the part of the Court for having delivered the judgment without notice to the parties. Further, I have found that the plaintiff's advocates were entitled to seek instructions from their client once they were notified of the judgment. The reason for the delay in this regard was genuine.

11. As regards the prejudice, if any, to be suffered by the defendant, I see none. A party has a right to pursue his right to the highest court in the land, if reasonable to do so. In any event, the defendant was not opposed to the application.

12. In this regard, I find that the application has merit and I allow the same as prayed. The plaintiff is to file the Notice of Appeal within 14 days of the date of this ruling.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MARCH, 2021.

A. MABEYA, FCI Arb

JUDGE