



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT MISC. CIVIL APPL. NO. 5 OF 2020

DAVID MATEGWA.....APPLICANT

VERSUS

KENYA UNION OF SAVINGS &

CREDIT CO-OPERATIVE LIMITED.....RESPONDENT

RULING

1. The application dated 9/1/2020 seeks orders that;

1. This Honourable Court be pleased to grant leave to the Applicant herein to file an Appeal out of time in respect of the Ruling and Order of the Chairperson of the Co-operative Tribunal delivered in Nairobi on the 7th day of November, 2019 in Nairobi Tribunal Cause No. 344 of 2019.

2. Upon prayer (a) being allowed, the annexed Memorandum of Appeal herewith be deemed to be duly filed upon payment of requisite fees.

3. The costs of this application be provided for.

2. The Applicant is dissatisfied with the Ruling of the Co-operative Tribunal delivered on 7/11/2019 and wishes to appeal. The delay in filing the Appeal is blamed on the failure by the Tribunal in supplying the Applicant with a certified copy of the Ruling. It is further stated that the intended Appeal is arguable with high chances of success.

3. The application is opposed. It is stated in the replying affidavit that the certified copy of the Ruling by the Tribunal was issued on 10/12/2019 and that in any event the proceedings and the ruling were not required at the time of filing the Appeal. That the Applicant has not been candid and is therefore undeserving of the discretion of this court. The court was urged to strike out the supporting affidavit as it was sworn by the Applicant's Advocate as opposed to being sworn by the Applicant.

4. I have considered the Application, the response and the submissions filed by the respective Advocates for the parties.

5. Section 79 Civil Procedure Act states as follows;

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the Appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

6. On enlargement of time, the principles applicable were set out by the Supreme Court of Kenya in the **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** as follows:

“This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of such discretion:

- 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;**
- 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;**
- 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;**
- 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.**
- 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;**
- 6. Whether the application has been brought without undue delay; and**
- 7. Whether in certain cases, like election petitions, public interest should be consideration for extending time.”**

7. The Applicant's averment in paragraph number 3 of the supporting affidavit is that he has never been supplied with the certified copies of the proceedings and the ruling despite his having applied for the same. No evidence has been exhibited herein in respect of the said request. The explanation for the delay is not satisfactory. It is noteworthy that the Respondent has a copy of the impugned ruling and has exhibited it herein.

8. In the upshot, I find no merits in the application and dismiss the same with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF JULY, 2021

B.THURANIRA JADEN

JUDGE