



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE MISC APPL. NO. E459 OF 2020

SIMON GITAHI KARIUKI.....1ST APPLICANT

JAMES KARIBU.....2ND APPLICANT

VERSUS

JAMES KARIUKI (claiming on his own behalf & on 26 others.....RESPONDENT

RULING

1. The Application dated 5th November, 2020 seeks **orders that the honourable court be pleased to grant leave to the Applicants to file and serve the Appeal out of time and/or that time for filing and serving the Appeal be extended.**
2. Secondly, **that the Memorandum of Appeal annexed hereto be deemed as duly filed and served upon payment of filing fees.**
3. The Applicants are aggrieved by the ruling delivered on 23rd July, 2020 by the Cooperative Tribunal and intends to appeal. The delay in filing the Appeal is blamed on the failure by Tribunal to supply the Applicants with the typed proceedings in time.
4. The application is opposed. It is stated in the replying affidavit that the real issue by the Applicants herein is the judgment delivered by the Tribunal on 19th September, 2017. It is further stated that the application herein is an abuse of the process of the court as a similar application was dismissed on 18th September, 2019. That the Applicants failed to comply with the judgment of the Tribunal and were committed to civil jail for three (3) months but have still refused to comply with the judgment. That the Applicants' application for the review of the judgment of the Tribunal was rightly dismissed. The Respondents accused the Applicants of delaying tactics.
5. I have considered the application, the response thereof and the rival submissions.
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 Applicants intend to Appeal on the ruling in respect of the dismissed application for review. The said ruling was delivered on 23rd July, 2020. Section 80 Civil Procedure Act and Order 45 Civil Procedure Rules do not bar the filing of an Appeal on an application for review. The delay in filing the Appeal has been explained to the satisfaction of the court. No prejudice will be suffered by the Respondent that cannot be compensated by way of costs.

8. With the foregoing, I allow the application. The Appeal to be filed within 14 days from the date hereof. Costs in cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF OCT., 2021

B. THURANIRA JADEN

JUDGE