



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISC. P & A. APPLICATION NO.25 OF 2018

PETER MWENE WATUA.....APPLICANT

- V E R S U S -

G4S SECURITY SERVICES.....RESPONDENT

R U L I N G

1. The Application coming for consideration in this ruling is the Notice of Motion dated 20/6/2018 seeking leave to appeal out of time from the Judgment of Hon. **B. LIMO (P.M.)** delivered on 14/3/2018 in **Kericho CMCC.206 of 2015**.
2. The application is supported by the Affidavit of **ROBERT OUMA NJOGA** in which he states that he learnt on 24/05/2018 that the Judgment was delivered on 14/3/2018.
3. He further stated that the Applicant is aggrieved with the Judgment and seeks leave to appeal out of time.
4. The Respondent filed grounds of opposition dated 12/10/2018 in which he states that the Applicant has already executed the Judgment he purports to be aggrieved against.
5. Further, that the Applicant is indolent as he filed the Application 3 months after the Judgment was delivered.
6. The parties filed written submissions in the Application dated 20/6/2018 which I have duly considered.
7. Section 79G of the Civil Procedure Act provides that:

“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”.

8. The principles to be considered in exercising the discretion whether or not to enlarge time were considered in the case of **First American Bank of Kenya Ltd vs. Gulab P Shah & 2 Others Nairobi (Milimani) HCCC NO. 2255 of 2000 [2002] 1 EA 65** and the court said the following factors have to be taken into account;

(i). the explanation if any for the delay;

(ii). the merits of the contemplated action, whether the matter is an arguable one deserving a day in court or whether it is a frivolous one which would only result in the delay of the course of justice;

(iii). Whether or not the Respondent can adequately be compensated in costs for any prejudice that he may suffer as a result of a favourable exercise of discretion in favour of the applicant.

9. In the case of **SHADE MANUFACTURERS & HOTELS LTD V SERAH MWERU MUTUU & 4 OTHERS [2005] eKLR**, the court held as follows;

“.....a respondent who wishes to contravene any statements of facts alleged by an applicant does so by filing and serving a

replying affidavit and, if he wishes to rely on any matters of law, does so by filing and serving a statement of grounds of opposition, otherwise a respondent risks the hearing of the application ex parte at the discretion of the court. It seems obvious to me, therefore, that where a respondent, as in the present application, challenges the averments of fact made in the supporting affidavits and also opposes the application on other grounds, he is entitled to file both a replying affidavit and a statement of grounds of opposition.”

10. The Respondent in the current case did not file any Replying Affidavit to refute the averments in the Supporting Affidavit to the Application.

11. The Respondent filed only grounds of opposition stating that the judgment has already been executed and further that the Applicant is indolent and undeserving of the orders sought.

12. I find that there is good and sufficient reason for the delay in filing the appeal. The averments in the supporting affidavit are not challenged.

13. I allow the Application dated 20/6/2018 and grant the Applicant 30 days from this date to file the intended Appeal.

14. The costs of the Application to abide the Appeal.

Delivered, Dated and Signed at Kericho this 2nd Day of October, 2020

A.N. ONGERI

JUDGE