



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC APPL. NO. 350 OF 2018

NARENDRA KARSAN SANGHANI

T/A K. B. SANGHANI & SONS.....PLAINTIFF/RESPONDENT

VERSUS

SHIVA CARRIERS LTDDEFENDANT/APPLICANT

RULING

1. The application dated 12th June, 2018 seeks orders that the honourable court be pleased to grant leave to the Defendant/Applicant to file an appeal out of time against the Judgment and decree delivered by Hon. P Muholi (Mr.) (SRM) in Milimani CMCC No. 4250 of 2011 – Narendra Karsan Sanghani T/A K.B. Sanghani & Sons v Shiva Carriers Limited.
2. Secondly, that the attached Memorandum of appeal be deemed dully filed within time upon payment of the prerequisite court fees.
3. It is stated in the grounds and the two affidavits in support of the application that judgment was delivered on 14th March, 2018 against the Applicant in the sum of Ksh.584,521/= interest and costs. The Applicant is dissatisfied with the said judgment and wishes to appeal. That the intended appeal has merits and will be rendered nugatory if the application herein is not allowed. The delay in filing the appeal is blamed on the time taken to obtain the typed copy of the judgment and to obtain instructions from the client.
4. The application is opposed. It is stated in the replying affidavit that the application is a delaying tactic meant to delay the Respondent from the enjoyment of the fruits of the judgment.
5. The application was canvassed by way of written submissions which I have considered.
6. 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 30 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. (See also Section 59 of the Interpretation and General Provisions Act and Order 50 rule 6 Civil Procedure Rules and Section 3A Section 95 of Civil Procedure Act Cap 21 Laws of Kenya)
7. The court therefore has the discretion to extend time within which to file an Appeal. As stated by the Court of Appeal in the case of **Aviation Cargo Limited v St. Mark Freight Services Limited [2014] eKLR:**

“...whether or not to grant extension of time or leave to file and serve record of appeal out of time is discretionary. Such discretion is exercised judicially with a view to doing justice. Each case depends on its own merit. For the Court to exercise its discretion in favour of an applicant, the latter must demonstrate to the Court that the delay in lodging the record of appeal is not inordinate and where it is inordinate the applicant must give plausible explanation to the satisfaction of the Court why it occurred and what steps the applicant took to ensure that it came to Court as soon as was practicable. In the normal vicissitudes of life, deadlines will be missed even by those who are knowledgeable and zealous. The Courts are not blind to this fact. When this happens, the reason why it occurred should be explained satisfactorily including the steps taken

to ensure compliance with the law by coming to Court to seek extension of time or leave to file out of time.”

8. The application at hand was filed on 14th June, 2018. The time within which to appeal lapsed on 13th April, 2018, following the delivery of the judgment on 14th March, 2018. Thus the Applicant was late by about two months. The delay has however been explained.

9. To balance the competing interests of both parties, I allow the application on condition that the Applicant do deposit the decretal sum in a joint interest earning bank account in the names of the counsels herein or in court within 30 days from the date hereof. The appeal to be filed within 14 days from the date hereof. Costs to the Respondent.

Dated, signed and delivered in Nairobi this 8th day of April, 2019

B. THURANIRA JADEN

JUDGE