



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL MISC. APPL. NO. 357 OF 2017**

**RAVLEEN KAUR SAGOO.....APPLICANT**

**VERSUS**

**SAGAR BUILDERS LIMITED.....1<sup>ST</sup> RESPONDENT**

**JAMES K. NDUNG’U.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application dated 8<sup>th</sup> September, 2017 seeks orders that:

**“1. Spent**

**2. That this Honourable court be pleased to extend the time within which the Applicant ought to have filed and served the Memorandum of Appeal from the ruling and order in Milimani CMCC No.6005 of 2016 delivered on 31<sup>st</sup> July, 2017.**

**3. That this Honourable court be pleased to fix the time for filing the intended Memorandum of Appeal under the time so extended.**

**4. That this Honourable Court be pleased to order a stay of proceedings arising from the ruling in Milimani CMCC No.6005 of 2016 pending hearing and determination of the intended Appeal.**

**5. That the costs of this application be provided for.”**

2. It is stated in the grounds and the affidavit in support of the application that the ruling of the lower court was delivered on 31<sup>st</sup> July, 2017 and allowed the matter to be referred to arbitration. That the Applicant is dissatisfied with the said ruling and wishes to appeal. That the delay of about eight (8) day in filing the appeal is blamed on the delivery of the ruling in the absence of the parties and oversight and inadvertent mistake on the advocates side. It is stated that the appeal has overwhelming chances of success. That if the application is not allowed, the appeal will be rendered nugatory.

3. The Respondent filed the grounds of opposition dated 9<sup>th</sup> January, 2018. It is stated that the application is bad in law, frivolous, vexatious and an abuse of the court process.

4. The application was argued by way of written submissions which I have considered.

5. As stated by Supreme Court in the case of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR:**

**“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 a consideration for extending time.”

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.”**

(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 delay herein is not inordinate and has been explained. I allow the application on condition that the appeal is filed and served within 7 days and the appeal be fixed for directions within 90 days from the date hereof. In default the application to stand dismissed.

Dated, signed and delivered in Nairobi this 21<sup>st</sup> day of Nov., 2018

**B. THURANIRA JADEN**

**JUDGE**