REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW APPLICATION NO. 102 OF 2018

IN THE MATTER OF JUDICIAL REVIEW APPLICATION BY STANLEY MOMBO AMUTI

AND

IN THE MATTER OF KENYA REVENUE AUTHORITY AGENCY NOTICE DATED THE 15TH FEBRUARY 2018

AND

IN THE MATTER OF TAX PROCEDURES ACT, 2015

AND

IN THE MATTER OF ACCOUNT NO. A0011629663, 9001520, 8240656, 8367753, 8230790, 82322815 AND 0103599125210, 0150175027800, 0100275027800, 0101775027800 HELD AT BARCLAYS BANK AND STANCHART BANK LTD BY STANLEY MOMBO AMUTI

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT 2015

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

REPUBLIC.....APPLICANT

VERSUS

KENYA REVENUE AUTHORITY.....RESPONDENT

AND

STANLEY MOMBO AMUTI.....*EX PARTE* APPLICANT

RULING

1. By a Chamber Summons dated **7th** March 2018, the *ex parte* applicant moved this court seeking leave to institute Judicial Review proceedings to apply for orders of *certiorari* and *prohibition* quash the Respondents decision to close and freeze its bank account numbers **A0011629663, 9001520, 8240656, 8367753, 8230790, 82322815 AND 0103599125210, 0150175027800, 0100275027800, 0101775027800** held at Barclays Bank and Standard chartered Bank Ltd and to prohibit the Respondent from closing and or freezing the said accounts.

2. On **8th** March 2018, the court ordered that before the court considers the matter on the question of leave, the *ex parte* applicant makes a full disclosure of all the facts relating to the *"Anti-corruption Authority matter including judgment and pleadings in Misc No. **5** of 2016 and that a further affidavit be sworn annexing the documents in question."*

3. Pursuant to the above order, on **6th** April 2018, the *ex parte* applicant filed the further affidavit. On **9th** April 2018, the court directed that the applicant serves the application within **7** days and scheduled the matter for *inter partes* hearing on **9th** July 2017.

4. On **9th** May 2018, the court granted the *ex parte* applicant leave to file the Judicial Review proceedings and directed that the substantive application be filed and served within **10** days from the said date. The court gave directions and time frames for filing responses and submissions and scheduled the matter for mention to confirm compliance and/or further directions on **25th** June 2018. The **10** days lapsed on **20th** May 2018. However, the *ex parte* applicant filed the application on **20th** June 2018.

5. On **21th** June 2018, the Respondent's counsel filed grounds of opposition stating *inter alia* that the *ex parte* applicant had failed to comply with the express orders of the court despite having approached the court under certificate of urgency; and that the leave granted had lapsed, hence the suit had abated, hence these proceedings ought to be dismissed with costs.

6. On **26th** June 2018, the *ex parte* applicant filed the Notice of Motion, the subject of this ruling seeking enlargement of *"time from the **10** days granted on 09/05/2018 by a further **1** day... and deem the substantive application filed herein out of time on 20/06/2018."*

7. I do not understand why the *ex parte* applicant is seeking for extension for **one** day, yet a simple calculation from **9th** May 2018 to **20th** June 2018 shows that the delay is for **42** days and not **one** day as counsel for the applicant suggests.

8. The core reason offered for the delay is that the *ex parte* applicant encountered serious financial difficulties and could not immediately raise the court filing fees. He has annexed court documents in support of the heavy financial commitments and challenges which contributed to his financial inability. These financial constraints, as I understand from the arguments by both parties have not been challenged.

9. **Mr. Omino**, counsel for the applicant argued that he intimated to the Respondent's counsel by e-mail that they were not able to file the application and informed them the financial challenges the applicant was going through. He invoked the provisions of Order **50 (6)** of the Civil Procedure Rules 2010. He acknowledging the existence of Court of Appeal decisions holding that the said rule does not apply to Judicial Review proceedings, but, in the same vein, he pointed out the existence of decisions by our superior courts holding that time can be extended in Judicial Review proceedings.

10. **Mr. Omino** stated that with the enactment of the 2010 Constitution, our courts have held that time for filing Judicial Review proceedings can be extended. To buttress his argument, he relied on *Republic vs Public Procurement Administrative Review Board ex parte Syner-Chemie*[1] discussed below.

11. **M/s Kithinji**, counsel for the Respondent relied on the grounds of opposition referred to above and strenuously opposed the application. To fortify her argument, she cited *Republic vs Commission for University Education & Another ex parte Genco University*[2] in which the court declined to extent time in a Judicial Review proceeding and struck off a application for being filed out of time.

12. It important to examine the facts in the above two decisions, that is, the one cited by the counsel for the applicant, and the other cited by counsel for the Respondent which decisions were incidentally rendered by the same court. This in my view will enable us to appreciate their precedential value in this case.

13. It is settled law that a case is only an authority for what it decides. This was correctly observed in *State of Orissa vs. Sudhansu Sekhar Misra* where it was held:-[3]

> *"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn vs. Leathem,**[4]**that "Now before discussing the case of Allen vs. Flood**[5]** and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides..." (Emphasis added)*

14. The ratio of any decision must be understood in the background of the facts of the particular case.[6] It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.[7] It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.[8]

15. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect.[9] In deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another.[10] To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but one must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches.[11] My plea is to keep the path of justice clear of obstructions which could impede it.

16. A glance at the two decisions shows that the facts and circumstances were totally different. In the case cited by the Respondents council, that is, *Republic vs Commission for University Education & Another ex parte Genco University*[12] the issue before court was narrow and specific. The application before the court had been filed out of time and without leave or application for extension of time. In the application before me, the application was filed out of time and before me is an application for extension of time. In the case cited by the *ex parte* applicants counsel, that is, *Republic vs Public Procurement Administrative Review Board ex parte Syner-Chemie*[13] the circumstances were as in the instant case and the question before the court was whether or not the court could grant extension of time in a Judicial Review

proceeding.

17. In view of the similarity the facts in the instant case and the facts in *Republic vs Public Procurement Administrative Review Board ex parte Syner-Chemie*[14] cited by **Mr. Omino,** I propose to examine the facts in the said case in detail. In the said case, the applicant approached the court with an application for leave to apply for Judicial Review Orders and the court granted the leave sought and ordered the applicant to file and serve the substantive motion within **10** days from the date of the order. However, the applicant, instead of filing the substantive motion as ordered, filed a motion but whose prayers were a replica of the chamber summons for leave. In other words, there was no prayer for Judicial Review orders to issue pursuant to the leave granted.

18. The learned judge observed that the question to be answered in the said case was whether, upon such leave having been granted, in the absence of a valid Notice of Motion filed within the period allowed the could enlarge time under Order **50(6)** of the Civil Procedure Rules and /or Section **59** of the Interpretation and General Provisions Act,[15] as read with section **95** and **63 (e)** of the Civil Procedure Act[16] in order to permit the applicant to file the Notice of Motion within an enlarged period. In other words, the court was invited to consider whether it could enlarge time in a Judicial Review proceeding, which is the question before me now.

19. Faced with the above scenario which is identical to the question before this court, the learned judge correctly observed that there are two schools of thought on this issue. The first, she stated, is the school which propagates that no such enlargement of time for filing of a substantive motion is envisaged in Order **53** of the Civil Procedure Rules. She added that the same proponents argue that owing to the special procedure adopted in Judicial Review proceedings, a party, other than invoking Order **53** of the Civil Procedure Rules cannot invoke the provisions of the Civil Procedure Act[17] and the Rules made there under.[18]

20. The learned judge proceeded to hold that there is the second school of thought which supports the applicant's position that although the court has no jurisdiction to enlarge the six months period given by the Law Reform Act[19](and by extension time in Judicial Review proceedings an applications such as the one under consideration) the learned Judge proceeded to state:-

> *" From the rival positions presented to this court, the question is whether this court, in the present constitutional framework should still let the former intricacies and obscurities hamper the provision of effective redress to facilitate access to justice for all or should it adopt a flexible approach, which is not necessarily crafting or innovating its jurisdiction, but bearing in mind that much of the old case law on the reach of the Judicial Review remedies may not be of such practical relevance today. But because the Legislature has given no explicit direction on the issue, the Court must adopt the interpretation of the silent provisions that best effectuates the legislative intent.*
>
> *In arriving at such a view, this court appreciates that Judicial Review has its origin in common law which is still applicable in our statutes today (see section 12 of the Fair Administrative Action Act, 2015), and which is judge made law, law made by judges in the absence of relevant constitutional or statutory provisions* ***(see Kenneth Culp Davis, Administrative Law Treatise 2:18 at 140 2 ed 1978****.*

21. After analysing the law and comparable jurisprudence, the court proceeded as follows:-

> **97.** *With the enactment of Fair Administrative Action Act, 2015 which Act implements Article 47 of the Constitution to give effect to the right to fair administrative action, the above Act effectively modifies the Law Reform Act and Order 53 of the Civil procedure Rules on flexibility in the application of the law to the circumstances of a particular case, with the sole intention of achieving substantive justice for the parties and especially where no prejudice is shown to be occasioned to the respondents or interested parties herein.*
>
> ***98****. In my modest view, no statute can be enacted with the sole intention of doing an injustice to parties. Article 47 of the constitution elevates fair administrative action from a common law action to a constitutional right under the Bill of rights. The same position applies to Article 48 of the Constitution which commands the state to ensure that all persons are facilitated to access justice without any impediments.*
>
> ***99.*** *Further, Article 20(3) (a) of the Constitution commands that in applying a provision of the Bill of Rights like in this case Article 47 of the Constitution on the right to fair administrative action which is invoked by the exparte applicant in this case, a court should* ***'develop the law to the extent that it does not give effect to a right or fundamental freedom', and to 'adopt the interpretation that most favours the enforcement of a right or fundamental freedom." [****Emphasis added].in my view, it would hamper the enforcement of the right to administrative action if the law Reform Act and Order 53 of the Civil Procedure Rules were strictly interpreted to exclude any room for enlargement of time where there is sufficient cause shown by the party applying for such enlargement of time.*

22. The court proceeded to allow the application but not before citing yet another illuminating court of Appeal decision in ***Gateway Insurance Company Ltd vs Avies Auto Sprays****[20]* where the Court of Appeal citing with approval several cases including the Indian case of ***Periagami Asari v Illupur Penchayert Board****[21]* dealing with the rule identical to Order **50** Rule **6** of the Civil Procedure Rules held that:-

> *"The principle that when the effect of the order granting time in the event of non compliance has to operate automatically the court has no power to extend time as it becomes functus officio, will apply when the suit is finally disposed of. If the order is not final and the court retains control over it and seized of the matter, it will have power to extend time." (Emphasis added)*

23. Section **9 (3)** of the Law reform Act[22] provides as follows:-

> *"In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for*

*the purpose of its being quashed, leave **shall** not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired."*

24. The above provision is replicated in Order **53** Rule **2** of the Civil Procedure Rules, 2010 in the following words:-

[Order 53, rule 2.] Time for applying for certiorari certain cases.

*"Leave **shall** not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired."*

25. Our courts which have adopted a strict interpretation of the above rule have based their determination on the interpretation of the word *shall* in the above provisions which they held bestows a mandatory obligation. The Court Appeal in *Ako vs Special District Commissioner, Kisumu & Another*[23] held that the prohibition is absolute and any other interpretation or view of the particular provision would be doing violence to the very clear provisions of sub-section **(3)** of Section **9** of the Law Reform Act.[24] He also cited *Re an application by Gideon Waweru Gthunguri**[25]*** whereby the colonial Supreme Court held that the said section imposes an absolute period of limitation.

26. A further argument adopted by the courts is that the provisions of Order **50** Rule **6** of the Civil Procedure Rules, 2010 are inconsistent with the provisions of Section **9 (3)** of the Law Reform Act.[26] In *Raila Odinga & Others vs Nairobi City Council*[27] it was held that:- ***(i)** the Rules under the Act cannot override the clear provisions of Section **9 (2)** of the Act; **(ii)** an act of Parliament cannot be amended by subsidiary legislation; **(iii)** Parliament in its wisdom has imposed this absolute period of six months and it is the Parliament alone which can amend it.*

27. Further, in *Republic vs Kenya School of Law & Council of Legal Education ex parte Daniel Mwaura Marai*[28]it was held that the provisions of a subsidiary legislation can under no circumstances override or be inconsistent with any act of Parliament be it the one under which they are made or otherwise. Also relevant is Section **31 (b)** of the *Interpretation and General Provisions Act*[29] which provides that no subsidiary legislation shall be inconsistent with the provisions of an Act of Parliament.

28. In *Republic v Council of Legal Education & Another ex parte Sabiha Kassamia & Another**[30]*** this court, this court on 18th July 2018 dismissed an application which had been filed outside the six months provided under the law. Unlike in the instant case, there was application before the court for extension of time.

29. Apparently recognizing the difficulty caused by the above provisions which imposes a stringent limitation, **Odunga J**. by way of obiter in *Republic v Mwangi Nguyai & **3** Others*[31] observed that it was high time section **9** of the Law Reform Act[32] was amended to provide for extension of time in cases where a strict adherence to the limitations manifests a miscarriage of justice and gave the example of situations whereby a decision is made and for some reasons the same is not made public with the result that the persons affected thereby are not aware of the decision until after the expiry of the limitation period.

30. In *Ako vs Special District Commissioner, Kisumu & Another*[33] cited above, the Court of Appeal was emphatic that "it is plain that under sub-section **(3)** of section **9** of the Law Reform Act[34] leave shall not be granted unless application for leave is made inside six months after the date of the judgment." The Court of Appeal proceeded to hold that the prohibition is statutory and is not therefore challengeable under procedural provisions of the Civil Procedure Rules, which permits for enlargement of time. A similar position was held by the Court of Appeal in *Wilson **Osolo -Vs- John Ojiambo Ochola & Another**[35]*thus:-

"It can readily be seen that Order 53 Rule 2 (as it then stood) is derived verbatim from Section 9(3) of the Law Reform Act. Whilst the time limited for doing something under the civil Procedure Rules can be extended by an application under order 49 of the Civil Procedure Rules that procedure cannot be availed of for the extension of time limited by statute, in this case, the Law Reform Act". There is no provision for extension of time to apply for such leave in the Limitation of Actions Act (cap 22, Laws of Kenya) which gives some limited right for extension of time to file suits after expiry of a limitation period. But this Act has no relevance here."

31. The above decisions which adopted a rigid construction of the above provisions were rendered before the promulgation of the 2010 Constitution. It should be recalled that sections **8** and **9** of the Law Reform Act[36] are borrowed from common law principles which traditionally governed exercise of Judicial Review jurisdiction. Order **53** of the Civil Procedure Rules, 2010 is borrowed from these provision.

32. The questions that warrants a candid interrogation is whether the argument that the court upholds a statutory provision which is based on traditional common law Judicial Review principles can now hold sway on the face of our current constitutional dispensation. The Constitution of Kenya, 2010, fundamentally changed the legal landscape in this country. This court cannot shut its eyes on express constitutional dictates as discussed below and determine a matter purely on common law principles.

33. Article **47** provides for the right to a fair Administrative Action. To give effect to Article **47**, Parliament enacted the Fair Administrative Action Act.[37] On the face of the above constitutional provision and the right to access justice guaranteed under Articles **48**, the right to enforcement of the Bill of Rights under Article **22,** and the authority of the court to uphold and enforce the Bill of Rights under **23**, the question that arises is whether a citizen who has explained reasons for not approaching the court within time allowed by the court can be

denied access to justice on the basis of the above provisions (which are borrowed from the traditional common law Judicial Review jurisdiction).

34. Section **7 (1)** of Part two of the sixth schedule to the Constitution provides that:-

> *(1) "All law in force immediately before the effective date continues in force and shall be construed with alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this constitution."*

35. All law must conform to the constitutional edifice. It follows that the provisions of sections **8** and **9** of the Law Reform Act[38] and Order **53** of the Civil Procedure Rules must be conform to the Constitution or be construed with such adaptations, alterations, modifications so as to conform with the Constitution.

36. As the Supreme Court of Appeal of South Africa observed[39] *"All statutes must be interpreted through the prism of the Bill of Rights."* Judicial Review in now entrenched in the Constitution. The concept of Judicial Review under the Constitution of Kenya is similar to that under the Constitution of South Africa where the South African Court held in *Pharmaceutical Manufacturers Association of South Africa in re ex parte President of the Republic of South Africa & Others**[40]*** that *"the common law principles that previously provided the grounds for Judicial Review of public power have been subsumed under the Constitution and, insofar as they might continue to be relevant to Judicial Review, they gain their force from the Constitution. In the Judicial Review of public power, the two are intertwined and do not constitute separate concepts."*The court went further to say that there are not two systems of law, each dealing with the same subject matter, each having similar requirements, each operating in its own field with its own highest court. Rather, there was only one system of law shaped by the Constitution which is the supreme law, and all law, including the common law, derives its force from the Constitution and is subject to constitutional control.

37. The entrenchment of the power of Judicial Review, as a constitutional principle should of necessity expand the scope of the remedy and the discretion and the power of the court to in such cases guided by the purposes, values and principles of the Constitution and the constitutional dictate to develop the law on that front. *First*, parties, who were once denied Judicial Review on the basis of the public-private power dichotomy, should now access Judicial Review if the person, body or authority against whom it is claimed exercised a quasi-judicial function or a function that is likely to affect his rights. *Second*, the right to access the Court is now constitutionally guaranteed. It would require a compelling reason that would pass an Article **24** analysis test to deny a litigant the right to approach the court. Where a party applies for extension of time as in this case, the court should exercise its discretion and examine the period of the delay and the reasons offered for the delay.

38. *Third*, an order of Judicial Review is one of the reliefs for violation of fundamentals rights and freedoms under Article **23(3)(f).** *Fourth,* section **7** of the Fair Administrative Action provides that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to a court in accordance with section 8; or a tribunal in exercise of its jurisdiction conferred in that regard under any written law. Section **7 (2)** of the act provides for grounds for applying for Judicial Review. *Fifth,* Article **159** commands courts to administer justice without undue regard to procedural technicalities.

39. In *Republic v Speaker of the Senate & Another ex parte Afrison Export Import Limited & Another*[41] discussing the same provisions, I observed that court decisions should boldly recognize the Constitution as the basis for Judicial Review. Additionally, court decisions should boldly recognize access to courts of a fundamental right guaranteed under the Constitution which can only be limited in a manner that can pass constitutional muster. It is a constitutional dictate that in applying the Bill of Rights, a court shall develop the law to the extent that it does not give effect to a right or fundamental freedom and adopt the interpretation that most favours the enforcement of a right or fundamental freedom. Talking about developing the law, Judicial review is now a *constitutional supervision* of public authorities involving a challenge to the legal validity of decisions.[42] Time has come for our Courts to fully explore and develop the concept of Judicial Review in Kenya as a constitutional supervision of power and develop the law on this front. Courts must develop Judicial Review jurisprudence alongside the mainstreamed "theory of a holistic interpretation of the Constitution.[43]

40. Judicial Review is no longer a common law prerogative, but is now a constitutional principle to safeguard the constitutional principles, values and purposes. The Judicial Review powers that were previously regulated by the common law under the prerogative and the principles developed by the courts to control the exercise of public power are now regulated by the Constitution.

41. It is therefore my conclusion that in an application for extension of time such as the one before me, all that an applicant is required to do is to demonstrate that he has a good reason for failing to file the application within the time allowed by the court or sufficiently account for the delay. It will also be a consideration that the impugned decision seeking to be challenged violates or threatens to violate the Bill of Rights or violation of the Constitution.

42. Provisions limiting access to courts must be read in a manner that conforms with the constitution. No matter how noble and worthy of admiration the common law principles are, if they are simply irreconcilable with constitutional parameters, then the Constitution must prevail. Suffice to say that the *ex parte* applicants have in the recitals in the heading to their application invoked Articles **21 (1), 23 (3) (f), 25 (c), 27 (1), 47 (1), 49 (1) (d) & 50 (2)** of the Constitution.[44]

43. It is well settled that whenever the court is invested with the discretion to do certain act as mandated by the statute, the same has to be exercised judiciously and not in an arbitrary manner and capricious manner. The classic definition of `discretion' by Lord Mansfield in *R. vs. Wilkes**[45]*** that `discretion' when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, `but legal and regular'.

44. Discretion vested in the court is dependent upon various circumstances, which the court has to consider among them the need to do real and substantial justice to the parties to the suit.[46] Discretion must be exercised in accordance with sound and reasonable judicial principles. The King's Bench in *Rookey's Case*[47] stated as follows:-

> *"Discretion is a science, not to act arbitrarily according to men's will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the constitution entrusted with."*

45. Article of the Constitution vests judicial authority in the courts to be exercised in accordance with the principles enumerated therein. These principles include protecting purposes and principles of the Constitution and administering justice without undue technicalities. Writing on judicial power, Chief Justice John Marshall wrote the following on the subject:

> *"Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law; and, when that is discerned, it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge, always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law.**[48]***

46. In addition, the discretionary powers of the court are constrained by the objectives of the Constitution to grant access to justice. 'Discretion' signifies a number of different legal concepts. Here the order is discretionary because it depends on the application of a very general standard— what is 'just and equitable' — which calls for an overall assessment in the light of the factors mentioned in [the Constitution or a statutory provision], each of which in turn calls for an assessment of circumstances.[49] Because these assessments call for value judgments in respect of which there is room for reasonable differences of opinion, no particular opinion being uniquely right, the making of the order involves the exercise of a judicial discretion. The contrast is with an order the making of which is dictated by the application of a fixed rule to the facts on which its operation depends.[50] There is nothing arbitrary or capricious about exercising a discretion in order to give effect to a constitutional right.

47. The *ex parte* applicant was candid. He explained the financial difficulties he faced and in ability to raise the court fees. The delay is not inordinate. I a persuaded that he has established sufficient cause. It is difficult to attempt to define the meaning of the words 'sufficient cause.' It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant.[51] No negligence, inaction or want of bons fides has been alleged in this case.

48. In conclusion, the *ex parte* applicant has sufficiently explained the delay and has established sufficient cause for this court to grant the extension of time sought. Accordingly, I allow the application dated **26th** June 2018 and order that the application dated **20th** June 2018 and filed on the same date be and is hereby admitted out of time and that the same is hereby deemed to have been duly and properly filed.

Orders accordingly

Signed, Dated and Delivered at Nairobi this 16th day of November 2018

John M. Mativo

Judge

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[1] Counsel cited *Republic vs Public Procurement Administrative Review Board ex parte Syner-Chemie* {2016} eKLR.

[2] {2017}eKLR.

[3] MANU/SC/0047/1967.

[4] {1901} AC 495.

[5] {1898} AC 1.

[6] Ambica Quarry Works vs. State of Gujarat and Ors. MANU/SC/0049/1986.

[7] Ibid.

[8] *Bhavnagar University v. Palitana Sugar Mills Pvt Ltd* (2003) 2 SC 111 (vide para 59)

[9] In the High Court of Delhi at New Delhi February 26, 2007 W.P.(C).No.6254/2006, *Prashant Vats Versus University of Delhi & Anr*. (Citing Lord Denning).

[10] Ibid.

[11] Ibid.

[12] {2017}eKLR.

[13] *Republic vs Public Procurement Administrative Review Board ex parte Syner-Chemie* {2016} eKLR.

[14] *Republic vs Public Procurement Administrative Review Board ex parte Syner-Chemie* {2016} eKLR.

[15] Cap 2, Laws of Kenya.

[16] Cap 21, Laws of Kenya.

[17] Ibid.

[18] Citing See ***Republic Vs Kahindi Nyafula & 3 Others Exparte kilifi South East Farmers Co- Operative Society*** **[2014] e KLR** by Angote J, applying ***Welamudi vs The Chairman Electoral Commission of Kenya*** **[2002] KLR 285 and *Republic V Kenya Bureau of Standards & Others [2006] EA 345.***

[19] Cap 26, Laws of Kenya.

[20] **{2011}eKLR**

[21] **AIR 1973 Mad 250**

[22] Ibid.

[23] Civil Appeal No. 27 of 1989, Nyarangi JA., Gachuhi JA., Kwach Ag. JA.

[24] Supra.

[25] {1962} 1 EA 520.

[26] Supra.

[27] {1990- 1994} 1 E.A 482.

[28] {2017} eKLR.

[29] Cap 2, Laws of Kenya.

[30] JR APP No. 703 of 2017.

[31] High Court Constitutional Petition No. 89 of 2008.

[32] Cap 26, Laws of Kenya.

[33] Civil Appeal No. 27 of 1989, Nyarangi JA., Gachuhi JA., Kwach Ag. JA.

[34] Cap 26, Laws of Kenya.

[35] **{1995} eKLR.**

[36] Ibid.

[37] Act No. 4 of 2015.

[38] Cap 26, Laws of Kenya.

[39]*Serious Economic Offences vs Hyundai Motor Distributors (Pty) Ltd: In re Hyundai Motor Distributors (Pty) Ltd v Smit NO and* [2000]

[40] *2000 (2) SA 674 (CC) at 33.*

[41] {2018} eKLR.

[42] See *Republic vs Commissioner of Customs Services Ex parte Imperial Bank Limited* {2015} eKLR.

[43] Ibid Note 38.

[44] Ibid Note 38.

[45] 1770 (98) ER 327

[46] Sir Dinshah Fardunji Mulla, *The Code of Civil Procedure*, 18th Edition, Reprint 2012, paragraph 1381.

[47] [77 ER 209; (1597) 5 Co.Rep.99].

[48]*Osborn v. Bank of the United States*, 22 U. S. 738 {1824}.

[49] *Norbis v Norbis* [1986] HCA 17; 161 CLR 513; 60 ALJR 335; 65 ALR 12.

[50] Ibid.

[51]The Court of Appeal of Tanzania in the case of *The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others* Civil Appeal No. 147 of 2006 (Munuo JA, Msoffe JA and Kileo JJA)