



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

MISC. CIVIL APPLN. NO. 11 OF 2016

1. JONES A. OGIN
2. BARNABAS OLONDE MBONGA
3. MARY ANYANGO
4. ISAIAH OWINO
5. PERES ADHIAMBO ASOMA
6. PERES ANYANGO
7. ZADOCK C. O. ONDIWA
8. JOHN ODHIAMBO OKELO.....APPLICANTS

-VERSUS-

SOUTH NYANZA SUGAR CO. LTD.....RESPONDENT

RULING

1. Before me is an application by way of the Notice of Motion dated 08/02/2016 seeking leave to file an appeal out of time.
2. The application was made on the grounds as appearing on the face thereof and was supported by the Affidavit sworn by the first Applicant on 08/02/2016 as well as a Further Affidavit sworn on 18/09/2016 upon grant of leave by this Court.
3. The Respondent did not oppose the application.
4. The application was thereafter heard by way written submissions and culminated into this ruling.
5. The jurisdiction of this Court in dealing with an application for leave to lodge an appeal out of time is *inter alia* donated by **Section 79G of the Civil Procedure Act**, Chapter 21 of the Laws of Kenya. That jurisdiction however must be exercised upon reason since it is discretionary and dependent upon the fulfillment of settled cardinal principles. (See: *Mwangi Kimenyi Mugwe vs A.H. Kamau, Court of Appeal Civil Appeal No. NAI. 357 of 2003 at Nakuru (unreported)*).
6. Judicially speaking, the principles for consideration in applications for leave to appeal out of time are now well settled. The Court of Appeal in considering an application for extension of time to file and serve

a Record of Appeal under the Court of Appeal Rules (which principles equally apply in the current instance) in GACHERO & ANO -VS- POINEER HOLDINGS (A) LTD & ANO.(2008) KLR 315 had the following to say:

“The powers of the Court (of Appeal) in an application for extension of time (under the Court of Appeal Rules, Rule 4) were discretionary and unfettered. However in executing its discretion, this Court would consider the length of the delay, the explanation or reason given for it (and) whether the intended appeal was arguable.....”

The above was restated in the decision of M.S.A Makhandia, J (as he then was) in Benjamin G. Ndegwa vs C.N. Murungaru (2009) eKLR.

7. Other factors for such consideration were stated by the Court of Appeal in Civil Application No. Nai. 41 of 2014 Samiyan Kaur Devinder Singh vs Speedway Investment Ltd & CFC Stanbic Bank Limited (UR 31/2014) to include: -

- (a) The effect of the delay in public administration of justice;***
- (b) The importance of compliance with time-lines in litigation;***
- (c) The resources of the parties;***
- (d) Whether the matter raises issued of public importance;***
- (e) If the Applicant has been diligent.***

8. The net effect of all the above considerations is to foster a quicker, fair and equitable disposal of disputes between parties, a calling which all persons and this Court is constitutionally-bound to uphold.

9. I have considered the application against the above considerations and find that the same is meritorious. I say so because the reason for the delay is purely and wholly on the part of the lower court in supplying the proceedings from 1st day of September 2015 up to 19th day of January 2016. The decisions intended to be appealed against were delivered on 20th day of August 2015 and the Applicants timeously applied for the proceedings one week later.

10. In light of the above this Court do hereby make the following orders:

- (a) The Applicants herein be and are hereby granted leave to file and serve the respective Memorandum of Appeal within 10 (ten) days of today.***
- (b) The Applicants herein shall file and serve the Record of Appeal within the next 60 days of today.***
- (c) The Appeal shall be listed for directions within 30 days of compliance of (b) hereinabove.***
- (d) Due to the nature of the application and given that it is unopposed I will make no orders as to costs.***

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 23rd day of February 2017.

A. C. MRIMA

JUDGE