



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & ADMIRALTY DIVISION**

**HCCC NO. 14 OF 2004**

**KENYA POWER & LIGHTING COMPANY LTD.....PLAINTIFF**

**VERSUS**

**JULIUS OLE SUNKULI(Acting Secretary General).....1<sup>st</sup> DEFENDANT**

**MOHAMMED YUSUF HAJI(National Treasurer).....2<sup>nd</sup> DEFENDANT**

**BONAYA GODANA(Deputy Secretary**

**of Kenya African National Union).....3<sup>rd</sup> DEFENDANT**

**AND**

**John Muthee Ngunjiri**

**Peter Otieno Oketch**

**Charles Maina Wandaka**

**Evans Ekaliche Attanasi**

**Silas Richard Mukolwe (Duly Registered Trustees**

**of Kenya African National Union Nakuru Branch.....OBJECTORS**

**RULING**

1. By a Notice of Motion dated 19.11.2015, the Applicant/Defendant seeks the Orders that the Court do grant them leave to file appeal out of time against the Orders of the Deputy Registrar of 12.2.2015 dismissing their objection.
2. They also seek to preserve LR.No. Nakuru Municipality Block 9/31 registered in name of Kanu Nakuru Branch office. The application is based on the fact that they are desirous lodging an appeal against a Deputy Registrar's ruling of 12.2.2015.
3. The Objectors had filed an application to review same Orders/ruling on 24.2.2015. However they later realized that the Deputy Registrar's Orders under Order 49 of the CPR ought to be impugned

- via an appeal within 7 days via way of Chamber Summons to a Judge.
4. The appeal could not be filed as long as the review motion of 24.2.2005 was pending thus same was withdrawn to pave way for the instant application.
  5. The Objectors moved Court under Order 50 Rule 6 CPR which mandates Court to extend time of an intended appeal to avoid miscarriage of justice. The application is supported by the affidavit of John Muthee Ngunjiri sworn on 19.11.2015 which reiterates the above facts.
  6. To oppose the application, the Plaintiff/Respondent has filed grounds of opposition dated 2.11.2015. The Respondent contend that, the appeal ought to have been lodged 7 days after the date of the impugned Order/ruling vide Order 49 rule 7(2) and (3) CPR.
  7. The application filed for review was withdrawn on 3.11.2015. The delay from 19.2.2015 to 30.11.2015 has never been explained. That is the period when 7 day lapsed to date of the filing of the instant application, a period of over 10 months. Thus Respondent prays for dismissal of the orders.
  8. The parties agreed to canvass the application via written submissions, but only the Plaintiff submissions are found to have been filed. Relying on the case of **E.A CARGO HANDLING SERVICES LTD, (1974) EA** at page 78 D the Respondent submit that a party seeking the exercise of courts discretion must give an explanation of how he is in this position which requires an explanation of the delay, and show that some useful purpose would be served by granting extension sought.
  9. The Plaintiffs submit that extension sought would only serve to further delay the Plaintiff enforcement of the judgment and recovering substantial amount due as from 7.8.2009 when the judgment was entered.
  10. Whether the Applicants have offered explanation acceptable to the Court to warrant the grant of the sought orders. Under Order 49, Rule 7(2) CPR, an appeal from the Deputy Registrar order ought to be appealed within 7 days from the date of the Order.
  11. The Applicants lodged review on 24.2.2015. The appeal ought to have been lodged on 19.2.2015. At the time of lodging the review the application, the days of lodging an appeal had lapsed. No reason is indicted as to why the appeal could not be lodged on 19.2.2015.
  12. However the Applicants were desirous of impugning the Deputy Registrar's Order as demonstrated by filing of application for review on 2.4.2.2015 5 days from the days appeal ought to have been lodged.
  13. Upon realizing that the proper mode of challenging Deputy Registrar's Order was via an appeal, the review motion was withdrawn on 3.11.2015 and instant application filed on 30.11.2015.
  14. In the case of **AVIATION CARGO SUPPORT LTD VS. ST MARK FREIGHT CARGO SERVICES LTD CA.98/2013** the court held that;

*“The policy of Court is to exercise latitude in interpretation of the rules so as to facilitate determination of appeals, once filed on merit and thus facilitate access to justice by ensuring that deserving litigants are not shut out. That is why principles of overriding objective was enacted...”*

But it is not intended to favour a party “*who is guilty of inordinate delay and has failed to explain it to the satisfaction of court*”. See **CITY CHEMIST & ANOTHER VS. ORIENTAL BANK LTD C.A 302/2008**.

15. Although the delay herein amount to 27 days plus earlier 5 days totaling to 32 days the court finds that the subject matter being land, the Applicant can be given a chance to be heard and the Respondent be compensated by way of costs.
16. The Court thus is mindful of extending time for filing an appeal within 7 days on condition that:-
  1. Costs of Ksh.30,000/= is paid to the Respondent within 7 days.
  2. The appeal is lodged within 7 days.
  3. In default of any of the above conditions (1 and 2) the application stands dismissed.
  4. The relief of stay will only be considered after appeal has been lodged.

**Dated, signed and delivered in court at Nairobi this 8<sup>th</sup> day of April, 2016.**

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**C. KARIUKI**

**JUDGE**