



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 141 OF 2015

SAMMY GATOTO KANUNGA.....APPLICANT

- VERSUS -

EQUITY BANK LIMITED.....RESPONDENT

RULING

1. The application before me is for leave to appeal out of time.
2. The applicant has expressed a wish to appeal against the Ruling which was delivered on 26th November 2014.
3. At the time of the delivery of the Ruling in issue, the trial court had not notified the applicant about the date when it would be delivered.
4. According to the applicant, he only learnt about the Ruling on 19th February 2015, after he perused the court file.
5. Having learnt of the Ruling, the applicant lodged a complaint, in writing, to the Executive Officer at the Thika Law Courts, pointing out the failure to notify him about the date of the Ruling.
6. In response to the complaint, the Executive Officer wrote to the applicant on 26th February 2015, confirming that the court delivered the Ruling in issue on 26th November 2014.
7. When served with the present application, the Respondent confirmed that it was also not served with the notice about the date when the learned magistrate planned to deliver his Ruling.
8. The Respondent blames the Applicant for being indolent, by not checking with the court after 22nd October 2014 when the court last deferred the Ruling.
9. Perhaps the Respondent did not take note of the letter dated 25th November 2014, which the Respondent wrote to the Chief Magistrate at the Thika Law Courts. By that letter, the Applicant expressly asked the court to fix a date for the Ruling and to then notify the Applicant about the date.
10. Clearly, the Applicant was pro-active in seeking notification from the court about the date when the Ruling would be delivered.
11. He expressly told the court that he was getting impatient because the Ruling had been put – off on several occasions.
12. The conduct of the applicant cannot be described as being consistent with indolence. To the contrary, the applicant sought to know when the Ruling would be delivered. But the court did not give him or the Respondent any notice.
13. To my mind, a court should not wait to be asked by litigants, when it would deliver a Judgment or a Ruling. It is the responsibility of the court to set a date when it will give its decision. If the date is set in the absence of any of the litigants, a notice must be served on that litigant.
14. In the absence of notice, the applicant would be unable to know the date when the court would

- deliver its decision.
15. Bearing in mind the time-lines during which a dissatisfied litigant has to lodge an appeal, if he is so minded, the failure to notify the litigant of the date when a Ruling is to be delivered is very prejudicial to him.
 16. When a court delivers a decision in the absence of the litigants, the question that arises is why then the said decision was being delivered. I am not suggesting that when a litigant who has been notified of the date for Ruling, the court cannot deliver its decision.
 17. The court, however, needs to make a conscious decision about whether or not to deliver its decision when all litigants were absent, even if they were made aware about the date for the Ruling.
 18. A Ruling is supposed to provide a determination to the dispute over which the court was called upon to adjudicate. Therefore, when the litigants were absent, they would be unaware of the said determination. If the court cannot provide to itself a good reason why it should proceed to deliver the decision in the absence of the parties, the Ruling should be deferred.
 19. In this case, I am satisfied that the Applicant had good reason for failing to commence the process of appeal within the time prescribed by law. He could not have filed a Notice of Appeal when he was not aware that a Ruling had been delivered.
 20. Accordingly, leave is now granted to the Applicant to appeal out of time. The Applicant has **SEVEN (7) DAYS** from today to lodge his intended appeal.
 21. As regards the costs of the application dated 25th February 2015, the same shall be in the cause in the intended appeal. If the appeal should be successful, the Applicant will also have the costs of this application.
 22. But if the appeal is not successful, for any reason, the Respondent will have the costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 2nd day of June 2015.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Mburu for the Applicant

No appearance for the Respondent

Collins Odhiambo – Court clerk.