



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
MISCELLENOUS CASE NO. 26 OF 2014

SBI INTERNATIONAL HOLDINGS AG. KENYA-----APPLICANT

VERSUS

WILLIAM AMBUGA ONGERI-----RESPONDENT

RULING

This Ruling is in respect of the Notice of Motion by the Applicant dated 9th September 2014, which seeks several prayers. The parties vide a consent dated 10th February 2015 and adopted by this Court on 16th February 2015 disposed of prayers No. 2 & 4.

The pending prayer is No.3 which is for enlargement of time for filing of an appeal.

The application is supported by the grounds on the face of the application and the supporting affidavit.

In the supporting affidavit the deponent who is counsel to the Applicant deposes that the Judgment they wish to appeal against was scheduled for delivery on 3rd June 2014 but was deferred.

It was indicated that the said judgment would be delivered on Notice. The Applicant's Counsel did not receive any notice of delivery of Judgement.

However on 4th July 2014 counsel for the Applicant received some correspondence copied to them which made them aware of the fact that Judgment had been delivered on 10th June 2014. (LKTI).

It was then that counsel obtained a copy of the Judgment & sought instructions from the Applicant who instructed them on the next cause of action.

The Applicant has been aggrieved by the Judgment/decree dated 10th June 2014 and wishes to appeal against it, and could not do so without leave of this Court.

The Respondent filed grounds of opposition. He states in grounds 4 & 5 that the Applicant has not explained the delay in filing the Appeal from 4th July 2014 when it learnt of the judgment and 10th September 2014 when this application was filed.

This application came for hearing on 15th June 2014. I said date was taken by both parties who were represented. On 15th June 2014, there was no appearance by or for the Respondent.

It was the submission of Mr. Terer for the Applicant that the delay of 2 months in filing this application

was not inordinate. He cited the case of **Edith Gichuga Koime -Vs- Stephen Nyagi Thirith Civil Application (Court of Appeal Nyeri) No.11 of 2014.**

Section 79 Civil Procedure Act provides:

“ Every appeal from a subordinate court to the High Court shall be filed within a period of thirty 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 & sufficient cause for not filling the appeal in time”.

It has not been disputed that the judgment by the Hon. Magistrate was delivered on 10th June 2014 without Notice to the Applicant. Further that the Applicant became aware of the said judgment on 4th July 2014 when the Respondent was in the process of obtaining a decree from the court, on 4th July 2014.

This was about 24 days since the delivery of the Judgment. Even the Respondents Counsel did not inform the Applicant of the delivery of the Judgment. It would be helpful to know how the Respondents Counsel knew that Judgement would be delivered on 10th June 2014 when indeed no Notice to the parties was issued by the Court.

From the record herein its clear the parties were trying some settlement of sorts. In the circumstances of this case, I do not find the delay of two months to be inordinate.

The Respondent has also not shown any prejudice that he will suffer if the leave to file appeal out of time is granted.

I therefore find that the Applicant has shown that the delay was not deliberate but was necessitated by the situation the Applicant found itself in.

I therefore allow the application for leave to file appeal out of time. The appeal to be filed within 14 days from the date of the Ruling.

The appeal if filed must be fast tracked to avoid any injustice to the Respondent.

Costs of the application to abide the appeal.

Dated, Signed and delivered in open court this 3rd day of July, 2015.

H.I ONG'UDI

JUDGE.

In the presence of:

Mr. Koech for Mr. Terer for applicant.

Robert - Court Assistant.