



IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC APPLICATION NO 361 OF 2014

KENYA BUILDERS & CONCRETE CO LTD.....APPLICANT

VERSUS

SANJIVA VIDORO MUSULWA.....RESPONDENT

RULING

1. It is common ground that the Applicant herein was late by 30 days in filing appeal against the decree of the lower court passed on 6th February 2014. The present application for leave to file appeal out of time (**notice of motion dated 4.4.2014**) was filed on 7.4.2014.
2. It also appears common ground that the judgment was delivered on the date reserved by the court with notice to both parties.
3. The explanation offered for the delay in the supporting affidavit sworn by the Applicant's learned advocate, **Joyce Kagai**, is -

(i) That she was not present at delivery of judgment on 6th February 2014 because she "was misinformed that (the) judgment would be delivered on notice".

She does not disclose who "misinformed" her.

(ii) That she subsequently "discovered" through a letter by the Respondent's counsels that judgment was entered on 6th February 2014.

This letter is annexed to the affidavit, and it is dated 17th and received on 19th February 2014. As already seen the present application was filed on 7th April 2014, about 1 ½ months later.

(iii) That she subsequently perused the court file and applied for a certified copy of the judgment "to ascertain the exact position" on liability.

It is apparent that she had not yet received the copy of the judgment but was still able to draft a memorandum of appeal.

4. The Respondent has opposed the application by replying affidavit filed on 23rd April 2014. It is sworn by his advocate, **Peter Mwaura Kamau**. The main point taken is that the judgment was delivered

as scheduled with notice to the parties, and the Applicant should not now seek to benefit from its counsel's failure to attend court at delivery of judgment.

5. I have considered the submissions of the learned counsels appearing. No authorities were cited.

6. The Applicant's learned counsel has been less than candid in her supporting affidavit. It turns out that judgment was delivered as scheduled on the date given by the court in the presence of both counsels at conclusion of the hearing. I cannot fathom why the learned counsel has embarked on a tall story about being misinformed about the date of delivery of judgement.

7. Furthermore, the Applicant's counsels were informed by letter dated 17th February 2014 about the judgment. Yet it was not until 7th April 2014 when the present application was made. No good and candid reason for the 30-day delay has been offered.

8. I find no good and sufficient cause for the Applicant's failure to file its appeal in time. The application for leave has no merit. It is hereby dismissed with costs. Any interim stay of execution is hereby vacated. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 6th DAY OF JUNE 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 11TH DAY OF JUNE 2014