



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Civil Appeal 45 of 1999

THAMBU THURA.....APPELLANT

VERSUS

NJAGI M'THUURA.....RESPONDENT

Extension of Time

: Extension of time limit

grounds of extension

: Time limit – no limit prescribed – need to undertake within a

reasonable time – reasonableness determined according to facts and - circumstances.

: Power of High Court to extend time. Appellate Jurisdiction Act

(Cap 9, Laws of Kenya), Section 7.

RULING

Mr. Charles Kariuki, learned Counsel for the Applicant herein argued before me on 25.06.2009 a Motion dated 25th July, 2008, and filed on 4th September 2008, and sought one order – that the Court do extend time of filing a Notice of Appeal, and that the costs of the intended appeal be provided for.

The Motion was supported by the Applicant's Affidavit sworn on 25th July, 2008 and the grounds on the face on the face of the motion.

The Motion was opposed by the Respondent whose case was urged by Mr. Basilio Gitonga. He relied upon the Affidavit of the intended Respondent Njagi Thuura sworn on 1st December 2008.

The Applicant's grounds for seeking extension of time to file a Notice of Appeal are comprised in the argument that he was not present when the judgment was read on 30.11.2006, and that he only came to know of this when he visited his Advocates Offices on 10.-07-2008. The Respondent contends however that the applicant Eustace Marangu was not only present in Court on 30.11.2006, but that he was also represented by Counsel. The Respondent does not therefore believe the applicant's statements in the grounds and supporting Affidavit that he only came to learn on 10.07.2008 that the judgment had been delivered, that the applicant merely wishes to shift blame for his late application to his former Advocates. It will not lie.

Section 7 of the Appellant donates discretion to this court to extend time in the following words –

7. The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired.

PROVIDED that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence,”

This cases does not concern the execution of any death warrant.

The Interpretation and General Provisions act [Cap 2, Laws of Kenya) Ss 58 and 59 provide as follows –

58. Where the time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises:

59. Where in a written law a time is prescribed for doing an act or taking a proceeding, and power is given to a court or other authority to extend that time then, unless a contrary intention appears, the power may be exercised by the Court or other authority although the application for extension is not made until after the expiration of the time prescribed.

In the case of JOSEPH KIMEMIA MBUGUA VS ORIENTAL FIRE & GENERAL ASSURANCE CO. LTD.[1977] K. L. R.34, Sachdeva’s held–

“Where no time is fixed for the doing of an act, it should be done within a reasonable time. What is reasonable in any situation will depend on the facts and circumstances of a particular case.”

In CHARAGU VS KAGURU [1986] K. L. R. 443, Hancox J.A. extended time in respect of a complicated land case in which the learned judge said that it would be unfortunate if justice were not fully seen to be done in an appellate court. In that case there had been a delay of 2 months, and the Court exercised its discretion in favour of the Applicant.

In the case of KIARIE VS NJOROGE [1986] K.L.R.402, Gachui Ag. J.A exercised his discretion in favour of the Applicant because the delay was caused by the Applicant’s agent, his Advocate, and he should not be penalized for the error of his agent.

The matter here was a civil appeal and the notice of appeal ought to have been filed within 14 days of the delivery of the courts’ Judgment on 30.11.2006. In other words it is the last date for filing it ought to have been at least 15.12.2006, barring any public holidays, such as Sundays or Saturdays when courts do not open, and, the 12.12.2006, which happens to be Republic Day, and a public holiday.

There is evidence on affidavit of the Respondent that the applicant was in fact in Court on 30.11.2006 and was well aware that the Court delivered its judgment on that date. Much more important, and despite an attempt to shift blame to his Advocates, the Applicant was represented by the same Counsel then, and today, Mr. Charles Kariuki, whose brief was held on that day by Mr. M. Kariuki both respectable and responsible counsel. I refuse to buy the ridiculous proposition that either Counsel failed to inform the other, or that the Applicant discovered 19 months later that the Ruling had been delivered in July 2008. A delay of two months may have been excusable, or that a complex question of law exists which calls for an opinion of the second appellate court. I do not find those situations in this Application.

For those reasons, I find no merit in the Applicant’s belated application to drag litigation endlessly. It is in the public interest that litigation comes to an end.

The Applicant’s application dated 25th July 2008 and filed on 4th September 2008 is dismissed with

costs to the Respondent.

There shall be orders accordingly.

Dated delivered and signed at Meru this 3rd day of July 2009.

M. J. ANYARA EMUKULE

JUDGE