



REPUBLIC OF KENYA



KENYA LAW
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**Arum v Sarova Hotels Limited (Civil Application E169 of 2021)
[2024] KECA 1326 (KLR) (27 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1326 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E169 OF 2021
MA WARSAME, JA
SEPTEMBER 27, 2024**

BETWEEN

MICHAEL ARUM APPLICANT

AND

SAROVA HOTELS LIMITED RESPONDENT

(An application for extension of time to institute an appeal, against the judgment of the Employment and Labour Relations Court at Nakuru (Wasilwa J.) dated 31st July 2023 in ELRC Cause No. E017 OF 2020)

RULING

1. The applicant (Michael Arum) has filed a Notice of Motion dated 4th December 2023 invoking this Court's jurisdiction under Rule 4 of the [Court of Appeal Rules 2022](#) seeking leave to extend the time to file and serve his intended appeal against the Judgment of the Employment and Labour Relations Court dated 31st July 2023.
2. The motion was supported by the applicant's affidavit sworn on a similar date where he deponed that:
 - a. His Notice of appeal was lodged on 14th August 2023 and the certified Proceedings were collected by his advocates on 3rd October 2023;
 - b. He could not file the appeal on time because he was unwell and had athlete's foot which is a complication brought on by diabetes. Consequently, he could not travel to have a sit down with his Advocates who are based in Nairobi in order to discuss the way forward with regards to the appeal.
 - c. He was subsequently hospitalised on 5th October 2023 to 12th October 2023 at Homabay County Teaching and Referral hospital where he was treated and advised not to strain for 21 days after he was discharged to enable his foot to heal;



- d. He was eventually able to travel on 14th November 2023 and instructed his advocates to proceed with the appeal;
 - e. His appeal is arguable and the delay was not intentional.
3. In opposition to the application, the respondent filed a replying affidavit dated 11th June 2024 wherein it was contended that the respondent already settled the decretal sum, that the appellant did not request for certified copies of the judgment and proceedings and that no sufficient reason has been given for failing to file and serve the appeal on time.
 4. I have considered the application, the applicant's various affidavits and the respondent's replying Affidavit. Rule 4 of this Court's rules empowers this Court to exercise its unfettered discretion in extending the time prescribed by the rules for the doing of any act. The factors for consideration are endless, so long as they are relevant. They include the period of delay; the reason for delay and the degree of prejudice the respondent stands to suffer (see *Njeri Njoroge v Joseph Maina Gichuhi & Another* [2018] eKLR; Civil Application No. 139 of 2018)
 5. It is common ground that an appeal must be lodged 60 days after filing a notice of appeal. It therefore follows that the applicant ought to have lodged his appeal by 13th October 2023. It appears that the certified proceedings were collected from the registry on 3rd October 2023, well before the 60 days had lapsed. However, the applicant alleges that he fell ill and was hospitalised from 5th October 2023 to 12th October 2023 and was advised to rest for 21 days following his discharge. He was only able to consult with his Advocates on 14th November 2023 when he travelled to Nairobi and give the go ahead to institute the appeal.
 6. On consideration of the whole matter, I find that the explanation for delay given by the applicant is wanting. Even though the applicant was unwell, no reason has been given as to why the applicant and his advocates, in this day and age could not discuss the way forward (if any) regarding the appeal over the phone, via email or through video conferencing and why preference was given to a physical face to face sit down to discuss lodging the appeal.
 7. The strict timelines and processes of this court aim to deliver timely, efficient, just and fair manner and cannot be held hostage by the preferred means of communication of a litigant with his Advocate. In addition, I have looked at the discharge notes and nowhere does it recommend that the applicant rests for 21 days. Even if it did, there is no explanation why the applicant did not seek out his advocates from 2nd November 2023 when the 21 days expired and only opted to travel on 14th November 2023.
 8. In the circumstance I find the reason for the delay has not been explained and dismiss the application with costs to the respondent.

DATED AND DELIVERED AT NAKURU THIS 27TH DAY OF SEPTEMBER, 2024.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

