



Tome v Bungoma County Assembly Service Board (CASB) & 2 others (Civil Application E115 of 2024) [2024] KECA 1495 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KECA 1495 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E115 OF 2024
JM NGUGI, JA
OCTOBER 25, 2024**

BETWEEN

FRANCIS SIMIYU TOME APPLICANT

AND

**BUNGOMA COUNTY ASSEMBLY SERVICE BOARD (CASB) 1ST
RESPONDENT**

SPEAKER/CHAIRMAN BUNGOMA (CASB) 2ND RESPONDENT

CLERK/SECRETARY BUNGOMA (CASB) 3RD RESPONDENT

(Being an Application for enlargement of time to serve the Respondents with the Notice of Cross-Appeal dated 22nd March, 2024 against the Judgment of the Employment & Labour Court at Bungoma, (Keli, J.) dated 14th March, 2024)

RULING

1. The application before the Court is dated 29th May, 2024. The applicant, Francis Simiyu Tome, seeks the following prayers reproduced verbatim:
 1. That the Notice of Cross-Appeal dated 22nd March 2024 be deemed for all intents and purposes as if duly served upon the Respondents pursuant to section 97 of the Court of Appeal Rules 2022.
 2. That in the alternative, the time limited for the Applicant to serve the Respondents with the Notice of Cross-Appeal be enlarged or extended to allow the serving of the same within such time as the Court shall deem fit.
 3. That costs of this application to abide the determination of the appeal.



2. The background is as follows. The applicant was a Principal Clerk Assistant with the Bungoma County Assembly. His employment was terminated on 8th December, 2022. Reckoning that his dismissal was unfair and unlawful, he sued the respondents at the Employment and Labour Relations Court in Bungoma. Judgment in the case was delivered on 14th March, 2022.
3. In the judgment, the learned Judge concluded that the applicant's dismissal was, indeed, unlawful. She, however, declined to order reinstatement and instead awarded damages in the form of 12 months salary. She awarded damages under other heads as well.
4. The respondents were aggrieved by the decision. They timeously filed and served a Notice of Appeal. It turns out that the applicant, who was partly successful at the ELRC, was also dissatisfied with the judgment. Acting in person, like he did at the ELRC, the applicant timeously filed a Notice of Cross-Appeal on 22nd March, 2024.
5. It would seem that the applicant failed to timeously serve the respondents with the Notice of Cross-Appeal. The essence of the present Application is the desire to regularize the Cross-Appeal by enlargening the time needed to serve it. The Application is supported by the applicant's affidavit deponed on 29th May, 2024 and a further affidavit deponed on 5th June, 2024. The applicant also filed written submissions dated 5th June, 2024. The latter two documents, however, seem to be strangely off-tangent and non-responsive to the Application on hand. They ponderously address the need to expedite the hearing of the appeal and give the impression that they are filed in support of another application and not the one before the Court.
6. In any event, the application before the Court is straightforward. It is one for extension of time under Rule 4 of the Court of Appeal Rules. The respondents did not file any response to it.
7. This Court is empowered to grant extension of time under Rule 4 of the Court of Appeal Rules which provides that:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
8. The principles on which this Court may exercise the discretion to extend time under Rule 4 were set out in *Leo Sila Mutiso v Hellen Wangari Mwangi* 2 EA 231 in which it was held as follows:

“It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court takes in to account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted.”
9. In the present case, the applicant admits that he was late in serving the Notice of Cross-Appeal because he misread the rules; and was unaware that he needed to serve it. As soon as he discovered his mistake, on 11th April, 2024, he proceeded to serve it. He, then, approached this Court about a month later to regularize the position. He urges the Court to exercise discretion in his favour because he is acting pro se; always acted in good faith; the delay is not inordinate and would not prejudice the respondents; and that the cross-appeal raises serious issues for determination by the Court – including whether he was



entitled to exemplary damages; and the circumstances under which reinstatement should be ordered in employment. His Notice of Cross-Appeal lists a whopping 16 grounds.

10. As aforesaid, the impugned judgment was delivered on 14th March, 2024. The Notice of Cross-Appeal was timeously filed on 22nd March, 2024. The applicant ultimately served it on 11th April, 2024. This application was filed on 29th May, 2024. These timelines demonstrate that the applicant has not been impermissibly languid in pursuing his intended cross-appeal. The delay cannot be said to be inordinate in any reasonable sense of the word. The reasons offered for the delay are plainly understandable.
11. In short, I am inclined to exercise the discretion granted by Rule 4 of the Court of Appeal Rules to extend time to the applicant. Since he has already served the Notice of Cross-Appeal dated 22nd March, 2024, the same shall be deemed to be duly served, and is hereby regularized.
12. There will be no order as to costs since the application was not contested.
13. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF OCTOBER, 2024.

JOEL NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

