



Alomba v Green Park Golf & Country Complex t/a The Great Rift Valley Lodge & Golf Resort (Civil Application 38 of 2019) [2024] KECA 1550 (KLR) (4 November 2024) (Ruling)

Neutral citation: [2024] KECA 1550 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION 38 OF 2019
JM MATIVO, JA
NOVEMBER 4, 2024**

BETWEEN

NOAH AKATU ALOMBA APPLICANT

AND

GREEN PARK GOLF & COUNTRY COMPLEX T/A THE GREAT RIFT VALLEY LODGE & GOLF RESORT RESPONDENT

(An application for extension of time to file a notice of appeal out of time in an intended Appeal from the Judgment and orders of the Employment and Labour Relations Court of Kenya at Nakuru (M. Mbaru, J.) dated 25th April, 2019 in ELRC No. 3 of 2017)

RULING

1. *Vide* an application dated 2nd July, 2019 brought under Rule 4, of the *Court of Appeal Rules* 2010, the applicant prays for extension of time within which to file and serve a notice of appeal against the Judgment issued 31st January, 2017 in Nakuru ELRC No. 3 of 2017.
2. The application is premised on the grounds listed on the face of the application and the applicant's supporting affidavit sworn on 21st February, 2018 by the applicant. The grounds in support of the application are that: -
 - (a) the notice of appeal of appeal dated 29th April, 2019 was timely filed;
 - (b) that the ELRC registry staff filed away the notice of appeal when he proceeded on leave and the applicant was advised to keep checking at the ELRC registry for the court filed to be retrieved
 - (c) On 21st June, 2019 the notice of appeal was traced and the same had been lodged in court on 30th April, 2019;



- (d) the delay in serving the notice of appeal to the respondents was occasioned by the confusion at the registry;
 - (e) no prejudice will be suffered by the respondents if the prayers sought are granted; and
 - (e) the appeal is competent and arguable with chances of success.
3. The application is not opposed.
 4. The applicant's submissions are dated 23rd July, 2021. He contended that he filed his notice of appeal on 29th April, 2019 in the ELRC registry at Nakuru and the said notice of appeal was lodged on 30th April, 2019 and issued 51 days later on 21st June 2019 when the period required for service of the said notice of appeal had lapsed. He therefore prayed for this Court to exercise its discretion under rule 4 of the Court of Appeal rules, 2010 by indulging him in order to avert any adverse effects.
 5. It is also submitted that the applicant served the notice of appeal upon the respondent immediately it was issued and that no prejudice will be suffered by the respondent if the orders prayed for are granted.
 6. I have considered the application, the affidavit in support thereto, its annexures, and the written submissions by the applicant. The only question for determination is whether the applicant has met the threshold for the exercise of the Court's discretion to grant leave for him to file a notice and record of appeal out of time.
 7. The application is governed by 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. It is trite that this Court has unfettered discretion under Rule 4 of this *Court's Rules* to extend time for the doing of any act under the Court Rules. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
 9. Based on the above cited decision, it is apparent that this application will be dispensed by determining whether the applicant has tendered sufficient reasons for not filing his notice of appeal within the stipulated time and whether the respondents will suffer any prejudice should the application be allowed.
 10. Pursuant to the provisions of rule 75 (2) of the *Court of Appeal Rules*, 2010, and considering that the ruling was delivered on 25th April, 2019 and indeed the notice of appeal was timely filed on 29th April, 2019, but, Rule 77 of the *Court of Appeal Rules*, 2022 requires that before or within 7 days after lodging a notice of appeal the same should be served on all persons directly affected by the appeal. Therefore, the notice of appeal lodged on 30th April, 2019 ought to have been served by 7th May, 2019. It is noteworthy that the instant application was filed on 2nd July, 2019 which is a delay of one month



and twenty-five days. The applicant's explanation is that there was delay in the issuance of the notice of appeal by the ELRC registry and when the notice of appeal was eventually issued on 21st June, 2019, the time to serve the notice of appeal had already lapsed.

11. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR , and stated as follows:

“ the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

12. The explanation proffered by the applicant on the delay to serve the notice of appeal upon the respondent is in my view plausible, satisfactory and that the delay was in the circumstances excusable and not inordinate. Consequently, I find that the applicant merits the exercise of this Court's discretion for the above stated reasons. I accordingly allow the applicant's notice of motion application dated July 2, 2019 on the terms that the applicant is granted extension of time to file and serve a notice of appeal dated April 29, 2019 against the judgment delivered by M. Mbaru, J. on April 25, 2019 in *ELRC No. 3 of 2017* within 7 days from the date of this ruling. There shall be no order as to the costs of the application.

DATED AND DELIVERED AT NAKURU THIS 4TH DAY OF NOVEMBER, 2024.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

Deputy Registrar

