



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Dakawou Transport Limited v Ahmed Abdi Kadir Ali (Civil Application
E077 of 2022) [2023] KECA 35 (KLR) (3 February 2023) (Ruling)**

Neutral citation: [2023] KECA 35 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E077 OF 2022
F TUIYOTT, JA
FEBRUARY 3, 2023**

BETWEEN

DAKAWOU TRANSPORT LIMITED APPLICANT

AND

AHMED ABDI KADIR ALI RESPONDENT

(Being an application for extension of time to file a notice of appeal and record of appeal from the Judgment of the Employment and Labour Relations Court of Kenya at Eldoret (Abuodha, J) Dated 4th February, 2022. in ELD. ELRC NO. 220 of 2017)

RULING

1. The applicant has filed this application by way of a notice of motion dated May 31, 2022 brought under various stated provisions, to wit, articles 10, 20(3), 25(c), 50, 159(2)(d), 164(3), 259(1) and (3) of the Constitution of Kenya, section 3A of the Appellate Jurisdiction Act, section 3 of the Judicature Act, rules 1(2), 4 and 47 of the Court of Appeal Rules. The applicant seeks two substantive orders; that time be extended for it to file and serve a notice of appeal and record of appeal out of time against the whole judgment of Abuodha, J, delivered on February 4, 2022 in Eldoret ELRC Case No 220 of 2017; and that there be stay of execution of the said judgment pending the hearing and determination of the intended appeal.
2. It is axiomatic that sitting as a single judge I have no jurisdiction to entertain and determine a prayer for stay and that must be the end of that limb of the application (See Kenya Industrial Estates Ltd v Samuel Sang & another [2008] eKLR).
3. Regarding the plea for extension of time, this court is told that the judgment of the ELRC was delivered on February 4, 2022 and the applicant's advocates on record at the time notified the applicant of it vide electronic mail (dakawou@africaonline.com) yet the applicant had ceased to use the email address due to technical hitches and was using its other address info@dakawou.com. This inadvertently led to



the applicant failing to give further instructions on filing an appeal. Subsequently, on May 24, 2022, auctioneers visited its yard to attach nine motor vehicles in execution of the decretal sum. The applicant paid the amount in court on May 30, 2022 and immediately instructed its advocates to file an appeal.

4. The respondent has filed a replying affidavit sworn on September 19, 2022 where he deposes that the application is late having been brought 120 days from the date of judgment which time is unreasonable and unexplained. He further deposes that the applicant had filed an application before the superior court seeking review of the judgment, which application was dismissed. A copy is attached for my perusal. It was only when the respondent took out execution proceedings that the applicant came to court to seek to stop that process and the applicant on June 9, 2022 complied with the judgment and paid the entire decretal sum and therefore the present application is but an academic exercise. The respondent contends that the application should therefore be struck out with costs.
5. Pursuant to powers granted under rule 4 of the Rules of this court, a single judge sitting on behalf of the court, can grant extension of time for the filing of a notice of appeal. The power to do so is discretionary and guided by well settled principles. Some considerations a judge will bear in mind are the length of delay, reason for delay, prejudice, if any, that the respondent may suffer if leave is granted and possibly, the chances of success of the intended appeal. (See *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* – Civil Application No Nai 251 of 1997).
6. From the affidavits and attachments filed herein it is fairly evident that the applicant would have known of not just the delivery of the judgment but its contents by March 3, 2022 when it sought review of that judgment before the ELRC. The applicant has not offered any explanation as why it took 87 days to bring the current application. That delay being unexplained is inordinate and inexcusable. It is apparent that the applicant had pegged its hope on the success of the application for review and must now live with the consequences of the outcome.
7. The application dated May 31, 2022 is therefore dismissed with costs.

DATED AND DELIVERED AT KISUMU THIS 3RD DAY OF FEBRUARY, 2023.

F. TUIYOTT

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

