



**Otieno v Colour Print Limited & another (Civil Application  
E007 of 2021) [2023] KECA 1012 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KECA 1012 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E007 OF 2021**

**F SICHALE, JA**

**JULY 28, 2023**

**BETWEEN**

**SIMON ODONGO OTIENO ..... APPLICANT**

**AND**

**COLOUR PRINT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CHARLES GISORE MARITA ..... 2<sup>ND</sup> RESPONDENT**

*(An Application for extension of time to file Notice and Record of Appeal out of time from the judgment, orders and decree of the High Court of Kenya at Nairobi - Civil Division (C. Meoli, J) dated 28th October, 2021 in HCCC No. 143 of 2017)*

**RULING**

1. The applicant's motion dated 16<sup>th</sup> December, 2021 seeks the following orders:
  - i. "Leave be granted to the Applicant to file and serve the Notice of Appeal filed herein out of time.
  - ii. The Notice of Appeal filed herein on the 18<sup>th</sup> Day of November, 2021 and served upon the Respondent and duly acknowledged by filing of an address of service be deemed duly filed as served with leave of the court herein.
  - iii. The costs herein be in the cause."
2. The motion is supported by an affidavit of Simon Odongo Otieno (the applicant herein) dated 16<sup>th</sup> December, 2021 in which he deposed that he is dissatisfied with the judgment of Meoli, J. delivered on 28<sup>th</sup> October, 2021; that it took him time to internalize the judgment which in any event was procured late from the registry due to procedural technicalities and that the filed Notice of Appeal was issued on 18<sup>th</sup> November, 2021.



3. The motion was opposed vide an affidavit sworn on 29<sup>th</sup> March, 2022 by Fredrick Otieno Mege, the respondents' counsel. He deposed that the impugned judgment was delivered on 28<sup>th</sup> October, 2021 in presence of counsel for both the applicant and the respondents; that the applicant had upto 11<sup>th</sup> November, 2021 to file a Notice of Appeal and finally, that the delay has not been explained.
  4. In the appellant's written submissions dated 20<sup>th</sup> May, 2022, he reiterated that under Rule 4 of this Court's Rules, the court has wide discretionary powers in consideration of an application for extension of time; that the applicant's delay was a mere 2 days which cannot be said to be inordinate; that the applicant's counsel delayed in filing the Notice of Appeal as the instructions from the applicant were not forthcoming.
  5. I have considered the motion and the supporting affidavit, the affidavit in opposition to the motion, the authorities cited and the law.
  6. It is not disputed that the impugned judgment was delivered on 28<sup>th</sup> October, 2021. Whereas the applicant deposed that the impugned judgment was not readily available as the file was with the Judge, it is true that there is no disclosure as to when the applicant received the judgment which he says he took time to internalize. The judgment having been delivered on 28<sup>th</sup> October, 2021, applicant had 14 days (Rule 75 (3) of this Court's Rules to file a Notice of Appeal. The Notice was filed and served upon the respondent on 18<sup>th</sup> November, 2021, clearly outside the 14 days. It is also noteworthy to point out that the applicant applied for proceedings on 18<sup>th</sup> November, 2021 and served the letter bespeaking the proceedings upon the appellant on 18<sup>th</sup> November, 2021. This was within the stipulated 30 days. Rule 4 of this Court's Rules provides:

“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”.
  7. The above provisions of the law have been enunciated in several decisions of this Court including in the case of *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA231 where the court held as follows:

“It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general matters which this court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay, thirdly, 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.”
  8. In my view, given the fact that the delay was not inordinate and given the fact that the applicant had taken steps to apply for proceedings within the stipulated period of 30 days and copied the letter bespeaking the proceedings upon the respondent, I think it may not serve the ends of justice to shut the applicant out of the seat of justice for being a few days late in filing the Notice of Appeal.
  9. Accordingly, I allow the motion of 18<sup>th</sup> December, 2021. Each party to bear his/its own costs.
- It is so ordered.



DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF JULY, 2023.

F. SICHALE

.....

JUDGE OF APPEAL

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

*signed*

**DEPUTY REGISTRAR**

