



REPUBLIC OF KENYA



ICEA Lion Assurance Company Limited v Ngongo (Suing as legal representative of Philip Mbaka Sawe (Deceased) (Civil Application E041 of 2023) [2023] KECA 1093 (KLR) (22 September 2023) (Ruling)

Neutral citation: [2023] KECA 1093 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E041 OF 2023
PO KIAGE, JA
SEPTEMBER 22, 2023**

BETWEEN

ICEA LION ASSURANCE COMPANY LIMITED APPLICANT

AND

**NYAMBUTI NGONGO (SUING AS LEGAL REPRESENTATIVE OF PHILIP
MBAKA SAWE (DECEASED) RESPONDENT**

(Application for extension of time to serve the Notice of Appeal from the Judgment of the High Court of Kenya at Kisii (Ougo, J.) dated 10th February, 2023 in HCCA No. 18 of 2021)

RULING

1. The applicant, ICEA Lion Assurance Company Limited, has filed a Notice of Motion dated 22nd March 2023 seeking, in the main, an orders that;
 2. The Honourable Court be pleased to extend time for service of Notice of Appeal and letter requesting for typed proceedings.”
2. The application is predicated on grounds on the face of the motion and the affidavit of Betty Isoe, a legal officer employed by the applicant company. The applicant explains that on 10th February 2023, the High Court dismissed Civil Appeal No. 18 of 2021 in which it had challenged the jurisdiction of the trial court extending time to execute a judgment after 13 years. The notice of appeal dated 17th February 2023, was filed within time but was inadvertently served 15 days late outside the time prescribed by this Court’s rules. The applicant also lodged written submissions which largely reiterate the foregoing assertions. There was no reply on record for the respondent.

I have given this application with its supporting affidavit and the applicant’s submissions due consideration. An application under Rule 4 is a plea to a single Judge of this Court to exercise his



discretion so as to allow a party who has run afoul the timelines imposed by the Rules to be able to file or serve documents out of time. The discretion is a judicial one to be judiciously exercised on the basis of principle, not capriciously.

3. The discretion is of course wide and unfettered but in deciding whether or not to extend time, some of the matters I consider include the length of the delay; the reason for the delay, (possibly) the likelihood of the appeal or intended appeal succeeding, and the prejudice, if any, that the respondent may be subjected to.

In the instant matter, the applicant is imploring me to extend time for serving to the respondent the filed notice of appeal, having served it 15 days late. Pursuant to rule 79 of the *Court of Appeal Rules, 2022*, an intended appellant is required to serve a notice of appeal upon all persons who may be affected by the appeal within 7 days of its lodgement. I observe that the notice of appeal that is on record, dated 17th February 2023, was lodged in court on 23rd February 2023. On record is also an email dated 17th March 2023, wherein the notice was sent to the respondent's advocate. I find the length of the delay in serving the respondent not inordinate and as such am inclined to allow the application. Besides there is no opposition from the respondent. Nor can I see any possible prejudice.

4. As to the prayer seeking extension of time for serving the letter bespeaking proceedings, this Court's Rules do not stipulate any timeline within which such service is to be effected, although obviously, that service should be done promptly. (See Rule 84) Accordingly, I make no order in that respect.

In the result, the motion dated 22nd March 2023, is allowed. I consequently extend time to the end that the notice of appeal lodged on 23rd February 2023 is deemed duly served. Costs shall be in the intended appeal.

Order accordingly.

DATED AND DELIVERED AT KISUMU THIS 22ND DAY OF SEPTEMBER, 2023.

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

