



**Kamau v Assets Recovery Agency (Civil Application Nai.
E315 of 2021) [2022] KECA 401 (KLR) (4 March 2022) (Ruling)**

Neutral citation: [2022] KECA 401 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION NAI. E315 OF 2021**

S OLE KANTAI, JA

MARCH 4, 2022

BETWEEN

JOSPAT KAMAU APPLICANT

AND

ASSETS RECOVERY AGENCY RESPONDENT

(An application for extension of time from the Judgment of the High Court of Kenya at Nairobi (Wakiaga, J.) dated 8th June, 2021 in Civil Application No. 13 of 2020)

RULING

1. I am asked in the Motion brought under Article 159 (2)(d) of the *Constitution of Kenya, 2010*, rule 4 of the *Court of Appeal Rules* and all other enabling provisions of law to extend time to the applicant (Josphat Kamau) to lodge Notice of Appeal out of time against the decision of the High Court (Wakiaga, J.) dated 8th June, 2021. I am also asked, if I grant leave to deem the Notice of Appeal dated 15th June, 2021 and signed on 29th June, 2021 to have been timeously filed and served; that I grant leave to the applicant to appeal against the said Judgment and direct that Civil Application No. E251 is properly on record. In grounds in support of the Motion and in a supporting affidavit of the applicant it is said that the intended appeal has merit as the High Court ordered that money in 3 accounts held by the applicant be forfeited to the state; that the applicants current lawyers were allowed to come on record and they filed a Notice of Appeal and letter bespeaking proceedings; that Deputy Registrar did not sign Notice of Appeal until 29th June, 2021 by which time time for lodging such Notice had expired thus the applicant was caught up by time lines; that draft Memorandum of Appeal shows that the intended appeal is arguable; that the applicant should be accorded an opportunity to appeal.
2. There is a replying affidavit of a Senior Sergeant of Police Fredrick Musyoki who is attached to the respondent (Assets Recovery Agency) as an investigator. He sets out the mandate of the respondent and, upon advise, he believes that the Motion does not meet the threshold on which I should exercise my discretion in favour of the applicant. He says that the applicant has not given sufficient reasons for



delay in instituting an appeal; that Civil Application No. E251 of 2021 is a matter for a full bench and I should dismiss the application.

3. The applicant found it necessary to file a Supplementary affidavit where he says that he deserves extension of time for the reasons he has given. He cites the case of *Julius Kamau Kithaka v Waruguru Kithaka Nyaga & 2 Others* C.A. No. Nyeri 14 of 2013 (ur) where it was held that an applicant no longer has to show sufficient reason why the court should extend time but should place material before court upon which the court will exercise discretion. Further, that current advocates could only come on record with leave of the High Court as Judgment had already been delivered.
4. I have seen written submissions and case law filed on behalf of the parties.
5. The principles that apply in an application of this nature are well known and were well captured in the case of *Fakir Mohamed v Joseph Mugambi & 2 Others* Civil Application No. 332 of 2004 as follows:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi*, Civil Application No. NAI. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 496, *Major Joseph Mwereri Igweta v Murika Methare & Attorney General* Civil Application No. NAI 8 of 2000 (ur) and *Murai v Wainaina (No. 4)* 1982 KLR 38.”

6. I am told here that after Judgment had been delivered by the High Court the applicant decided to change his lawyers and appointed a new law firm. The new law firm applied under Certificate of Urgency to be allowed to come on record for the applicant; a consent was recorded on 22nd June, 2021 allowing the application after which the new lawyers filed a Notice of Appeal and a letter bespeaking proceedings on 23rd June, 2021. It is deposed that the Deputy Registrar of the High Court did not sign Notice of Appeal until 29th June, 2021 which was outside the 14 days allowed to lodge a Notice of Appeal.
7. It is common ground that after Judgment was delivered by the High Court on 8th June, 2021 the applicant appointed a new law firm to represent him in the matter. The *Civil Procedure Act* requires that if a law firm is to come on record for a party after Judgment has been delivered that lawyer or law firm must obtain leave of court to come on record replacing the earlier law firm. Here the law firm of Gordon Ogola, Kipkoech & Company Advocates applied in February, 2021, a few days after Judgment was delivered, to be granted leave to appear for the applicant in place of the law firm previously on record. The new law firm filed Notice of Appeal and letter bespeaking proceedings and made follow ups but Notice of Appeal was not signed by the Deputy Registrar on time. It was signed on 29th June, 2021 when time for lodging the same had elapsed.
8. The applicant has satisfied me in the circumstances that I should exercise my discretion in his favour. I allow the Motion to the extent where I am asked to extend time for serving Notice of Appeal and lodging of Record of Appeal out of time. I hereby deem Notice of Appeal signed by the Deputy Registrar on 29th June, 2021 as properly filed. Let the same be served on the respondent within 14 days and Record of Appeal be filed within 30 days thereafter. Costs of the Motion will be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH, 2022.



S. ole KANTAI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

