



Kayser Investments Limited v West African Foodstuffs Co. Ltd & 2 others (Civil Appeal (Application) E524 of 2021) [2022] KECA 418 (KLR) (4 March 2022) (Ruling)

Neutral citation: [2022] KECA 418 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E524 OF 2021**

DK MUSINGA, JA

MARCH 4, 2022

BETWEEN

KAYSER INVESTMENTS LIMITED APPLICANT

AND

WEST AFRICAN FOODSTUFFS CO. LTD 1ST RESPONDENT

MOJIRADE IDAYAT OLAYANJU 2ND RESPONDENT

Y. A. OLAYANJU 3RD RESPONDENT

(An appeal against the Ruling and Order of the High Court of Kenya at Nairobi, Civil Appeals Division (H. I. Ong’undi, J.) dated 30th June 2021 in E.L.C Cause No. E001 of 2021 Formerly HCCA No. E030 of 2021.)

RULING

1. The applicant’s Notice of Motion dated 16th December 2021 seeks extension of time for filing the memorandum and record of appeal against the Ruling in ELC Cause No. E001 of 2021 by Ong’undi, J. delivered on 30th June 2021. The applicant further prays that the record of appeal lodged on 9th September 2021 be deemed as properly filed.
2. The applicant’s Advocate, Martha Ochieng, states that the reason for the delay in filing the record of appeal was illness that caused her to take sick leave. The applicant’s counsel states that she tested positive for Covid-19 and that disrupted the operations of her office. Counsel has attached hospitalisation documents in support of her averments.
3. The respondents’ advocate, Christine Oraro, in her replying affidavit states, inter alia, that the ruling of 30th June 2021 was in respect of a preliminary objection raised by the applicant which was dismissed and Ong’undi, J. directed that the matter be transferred to the Environment and Land Division for hearing and determination; that the application pending in the matter was heard and determined by



Oguttu Mboya, J. on 10th November 2021; and that although the record of appeal was lodged on 9th September 2021, there is no explanation for the delay in filing the application for extension of time, which was done on 21st December 2021.

4. The guidelines for determination of an application under rule 4 of this Court's Rules have been well settled in a plethora of decisions, among them is *Leo Sila Mutiso v Hellen Wangari Mwangi [1999] 2 EA 231*. Secondly, it is trite law that for this Court to exercise its discretion under rule 4, every delay must be explained by the party at fault. See *Joel Tirop Busienei v David Randichi [2016] eKLR*.
5. The applicant's advocate was discharged from hospital on 2nd August 2021 and was advised to isolate herself for a period of 7 days. Assuming that she returned to the office by mid-August 2021, it took her up to 9th September 2021 to lodge the record of appeal. But there is no indication as to what caused the further delay between 9th September 2021 and 21st December 2021 when the application for extension of time was filed.
6. More importantly, the intended appeal has already been overtaken by events, in that the applicant's preliminary objection having been overruled, the substantive application was heard and determined on 10th November 2021, a fact that was not disclosed by the applicant's counsel.
7. For these reasons, this application for extension of time is without any merit and I dismiss it with costs to the respondents.

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

D. K. MUSINGA, (P)

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

