



Ready Consultancy Ltd & 2 others v First Community Bank & another (Civil Application 68 of 2021) [2022] KECA 772 (KLR) (10 June 2022) (Ruling)

Neutral citation: [2022] KECA 772 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION 68 OF 2021**

**SG KAIRU, JA
JUNE 10, 2022**

BETWEEN

**READY CONSULTANCY LTD 1ST APPLICANT
MOHAMMED ISSA DUCALE 2ND APPLICANT
MOHAMED HASSAN ALI 3RD APPLICANT**

AND

**FIRST COMMUNITY BANK 1ST RESPONDENT
COUNTY GOVERNMENT OF GARISSA 2ND RESPONDENT**

(An application for stay of execution of the judgement of the High Court of Kenya at Garissa (Ali Aroni, J.) delivered on 10th June 2021 and for extension of time to file a notice of appeal against the said judgment out of time in High Court Civil Case No. 4 of 2019)

RULING

1. In their blanket application dated 6th September 2021, the applicants Ready Consultancy Ltd, Mohamed Issa Ducale and Mohamed Hassan Ali seek two substantive orders against the respondents, First Community Bank and County Government of Garissa. The first prayer, which is the subject of this ruling, is for an order for extension of time “to enable the applicants file a notice of appeal out of time.” The second prayer, which I cannot consider as a single judge, is for stay of execution of the judgment of the High Court delivered on 10th June 2021.
2. In that judgment, the High Court found the applicants liable to the 1st respondent for a working capital loan that was extended to the 1st applicant and secured by guarantees and indemnity of the 2nd and 3rd applicants.



3. The basis for seeking extension of time is set out in the grounds on the face of the application and in the supporting affidavit of Kipkurui Ng'eno Birir as amplified in the written submissions dated 28th November 2021 filed on behalf of the applicants. In opposition to the application, there is a replying affidavit sworn by Claris Ajwang Ogombo the Legal Officer of the 1st respondent and written submissions dated 11th September 2021 filed by the firm of Wesonga, Mutembei & Kigen Advocates on behalf of the 1st respondent.
4. During the virtual hearing of the application before me on 2nd March 2022, there was no appearance for the applicants. Learned counsel Mr. Mutembei appeared for the 1st respondent and indicated that he was relying entirely on the replying affidavit and written submissions in opposing the application. I have duly considered the application for extension of time, the affidavits and the submissions.
5. The principles on which this Court considers applications for extension of time under Rule 4 of the Court of Appeal Rules are established. In that regard, counsel for the 1st respondent referred the Court to case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi*, Civil Application No. Nai 255 of 1997 (1999) 2 EA 23. Waki, JA summarized those principles in the case of *Fakir Mohamed vs. Joseph Mugambi & 2 others* [2005] eKLR where he stated:

“The exercise of this Court’s discretion under Rule 4... 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 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 vs. Mwangi* Civil Appl. NAI. 255 of 1997 (UR), *Mwangi vs. Kenya Airways Ltd* [2003] KLR 486, *Major Joseph Mwereri Igweta vs. Murika M’Ethare & Attorney General* Civil Appl. NAI. 8/2000 (UR) and *Murai v Wainaina* (No 4) [1982] KLR 38.”
6. The Supreme Court of Kenya, more recently in *Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others*, Supreme Court Application No. 16 of 2014[2014] eKLR pronounced that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; that extension of time is a consideration on a case to case basis; that delay should be explained to the satisfaction of the court; whether there will be prejudice suffered by the respondents if the extension is granted; whether the application is brought without undue delay; and whether public interest should be a consideration.
7. With those principles in mind, the judgment the applicants intend to challenge on appeal was delivered on 10th June 2021. Counsel for the applicants deposes that notice of delivery was not given and that the applicants became aware of the judgment on 28th June 2021 when the advocates for the applicant were served with notice of taxation; that on 5th July 2021 the advocates applied for a copy of the judgment which they transmitted to the applicants on 9th July 2021; that on 16th July 2021 the applicants instructed the advocates to challenge the judgment on appeal by which time the time for filing notice of appeal had already lapsed and hence the present application. The present application is dated 6th September 2021 and was lodged on 27th September 2021. There is no explanation at all why it took that long to make this application.



8. Apart from the inordinate delay which is not explained, it is noteworthy from the judgment of the High Court that on the date of hearing of the suit before that court, the applicants did not appear and the intended grounds of appeal are nowhere indicated. All in all, there is no material placed before me on the basis of which I am able to exercise the Court's discretion in favour of the applicants.
9. The application for extension of time fails. It is hereby dismissed with costs to the 1st respondent.
Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 10TH DAY OF JUNE 2022.

S. GATEMBU KAIRU, FCIarb

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JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR

