



REPUBLIC OF KENYA



KENYA LAW
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**Apollo v Guaranty Trust Bank (K) Ltd (Civil Application
E337 of 2021) [2022] KECA 1003 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 1003 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E337 OF 2021
W KARANJA, JA
SEPTEMBER 23, 2022**

BETWEEN

GEORGE AMATIEKU APOLLO APPLICANT

AND

GUARANTY TRUST BANK (K) LTD RESPONDENT

(Being an Application to file an serve notice of appeal and appeal out of time from the judgment and orders the Employment and Labour Relations Court at Nairobi (Radido, J.) delivered on 13th March, 2020 in ELRC Cause No. 740 of 2014)

RULING

1. George Amatieku Opollo (the applicant) was an accused person in Milimani Senior Principal Magistrate Court at Nairobi in Milimani Criminal Case No. 1564 of 2010 whereby he was found guilty as charged and convicted for the offence of conspiracy to defraud contrary to section 317 of the [Penal Code](#) way back in June 2016. He appears to have filed an appeal against that conviction and sentence before the High Court.
2. In what appears to be a different matter filed before the Employment and Labour Relations Court (ELRC), (namely ELRC No. 740 of 2014) the applicant's claim was dismissed by Radido, J. on March 13, 2020. This dismissal prompted the applicant to file a Notice of appeal before this Court dated March 16, 2020 but filed on April 3, 2020. The Notice of Appeal was filed on time. The applicant however, deposes that the said Notice of appeal was inadvertently served on the office of Director of Public Prosecutions on August 7, 2020 instead of being served on the respondents herein. According to the applicant the confusion in service arose due to the existence of the criminal appeal I have mentioned above.
3. From the Notice of appeal annexed to the applicant's affidavit, the same was served on the office of the Director of Public Prosecutions on August 7, 2020. Clearly, even if the Notice of Appeal had been



served on the correct party, it was served 4 months late, outside the timelines provided under Rule 79 of the Rules of this Court. We are not told exactly when the said mistake was discovered prompting the applicant to move his Court under Certificate of Urgency vide the Notice of Motion now before me, which is pronounced to be predicated on a raft of provisions from the Constitution to the Civil Procedure Act.

4. Primarily however, the relevant law is Rule 4 of the Court of Appeal Rules (hereafter the Rules). In the said application the applicant seeks leave of the Court to file and serve the Notice of Appeal and Appeal out of time. The motion is supported by the applicant's affidavit sworn on September 27, 2021. The applicant deposes that the respondent will not be prejudiced if leave to file the appeal is granted and that it will be fair and just for the Court to do so. There is no deposition whatsoever alluding to the length and reasons for the delay.
5. The motion is opposed by the respondent through grounds of opposition dated February 2, 2022. No submissions were filed in this matter but the respondent's counsel filed a list of authorities. In the grounds of opposition, the respondent states that the application falls short of the threshold for extension of time under Rule 4 of the Rules. The respondent contends the delay is inordinate (from March, 2020 to September 27, 2021) and that no reason has been given for the delay; neither the impugned judgment nor the memorandum of appeal have been attached and so the Court is unable to assess whether or not the applicant has an appeal with chances of succeeding; and finally, that the respondent will be prejudiced if leave is granted as litigation must come to an end.
6. I have considered all the material placed before me. I am not in the habit of castigating counsel, but in this case I am constrained to say that I am very disappointed in the overall lackadaisical manner in which counsel for the applicant handled this matter. This is not just a case of inadvertence on the part of counsel, but in my view, it smacks of ineptness. The only thing they got right was to file the Notice of Appeal on time. The said notice of appeal was thereafter not only served on a totally irrelevant party, but it was also served on them 4 months late. No reason whatsoever has been proffered for that delay. Even after serving the notice on the wrong party, the further delay of 12 months has not been explained and there has not been the slightest attempt to explain it.
7. The law in this area is settled and the guidelines the court has to consider when faced with an application to extend time are clear and have been reiterated in many matters before this Court and even before the Supreme Court. This Court in its recent decision in Muringa Company Ltd v. Archdiocese of Nairobi Registered Trustees [2020] eKLR stated as follows:

“Some of the consideration, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”
8. None of the above requirements have been met. In as much as sympathise with the applicant for the debacle he finds himself in, the law must be complied with and my sympathy does not account for much.
9. I need not say more. This application is grossly deficient of the ingredients necessary in order for it to succeed. Accordingly, the application is dismissed with costs to the respondent.



DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2022.

W. KARANJA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

