



Board of Trustees National Social Security Fund v Kajwang & Kajwang Co Advocates & 2 others (Civil Application 346 of 2021) [2022] KECA 1046 (KLR) (23 September 2022) (Ruling)

Neutral citation: [2022] KECA 1046 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 346 OF 2021
W KARANJA, JA
SEPTEMBER 23, 2022**

BETWEEN

BOARD OF TRUSTEES NATIONAL SOCIAL SECURITY FUND ... APPLICANT

AND

KAJWANG & KAJWANG CO ADVOCATES 1ST RESPONDENT

KINYANJUI, NJUGUNA CO ADVOCATES 2ND RESPONDENT

KISIMA MANAGEMENT LIMITED 3RD RESPONDENT

((Being an application for extension of time to serve a notice of appeal against the judgment of the High Court at Nairobi (Nzioka, J.) dated 20th April, 2020 in HCCC No. 543 of 2007 Misc. Application No. 276 of 2016 & Misc. Application No. 182 of 2017))

RULING

1. The firm of Wetangula & Co. Advocates (the applicant) filed an appeal arising from HCCC No. 543 of 2009 against a judgment of Nzioka, J. Although, the Notice of appeal was filed on time, service of the same pursuant to Rule 79 of this Court's *Rules* is disputed. According to learned counsel for the applicant the Notice of appeal was served on learned counsel for the respondents by email on May 13, 2020 but counsel for the respondents said they did not receive the same. This issue came to the fore when counsel for the respondents deposed to that effect in an affidavit sworn on August 5, 2021 in support of an application filed before the High Court. Unfortunately, the applicant was unable to produce a copy of the email in question due to what he said was a technical hitch in their computer system. That averment is supported by one Molly Vihenda, who deposes in an affidavit sworn on September 23, 2021 that the Notice of appeal was sent to the firm of Kajwang and Kajwang as well as the firm of Kinyanjui Njuguna Advocate on or about May 13, 2020. He deposes further, that there was a computer hitch with the computer in their office and they have been unable to retrieve the said emails.



2. According to counsel for the applicant, they have an appeal with good chances of success. Furthermore, the respondents will not suffer any prejudice if time is extended for the Notice of appeal to be served afresh on the respondents.
3. I note however, that the email addresses used to send the said Notice of Appeal to the respondents' counsel are not indicated. That notwithstanding, I note that there are no replying affidavits to the instant application. I would have been minded to assume that the application was not served on the respondents, probably following the same hitch in the computer network in the applicant's counsel's offices. However, there is a hearing notice from this Court on record showing that the same was served on counsel for the respondents on May 6, 2022 at 4:35 pm, yet the respondents did not file any submissions as directed by the Court through the said hearing notice. Counsel for the respondents were therefore made aware of this matter yet they did not deem it necessary to file any replying affidavits or submissions. The only logical conclusion to be drawn is that the application is not opposed, and I so find.
4. In the result, I allow the application and grant counsel for the applicant leave to serve the Notice of Appeal on the respondents within 7 days from the date of this Ruling. I make no order on costs as the application is not opposed.

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

