



**Tanui v Phillips Pharmaceuticals Limited (Civil Application
197 of 2020) [2022] KECA 1049 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 1049 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 197 OF 2020
DK MUSINGA, JA
SEPTEMBER 23, 2022**

BETWEEN

JACKSON KIPROTICH KIRUI TANUI APPLICANT

AND

PHILLIPS PHARMACEUTICALS LIMITED RESPONDENT

(Being an application for extension of time to file a Notice of Appeal, request for typed proceedings and decree against the Judgment of the Employment and Labour Relations Court of Kenya at Mombasa (N. Ndolo, J.) dated 9th April 2020 in E.L.R.C Cause No. 495 of 2018.)

RULING

1. The applicant's application is for extension of time to file a notice of appeal. The judgment that he seeks to appeal from was delivered on April 9, 2020 but his advocate did not notify him of its delivery until April 25, 2020. This was at a period when Covid-19 was at its peak in the country and there was restriction of movements.
2. The applicant instructed the advocate who had acted for him before the Employment and Labour Relations Court to file an application for leave to appeal but the advocate was unwilling. It was not easy for the applicant to get another advocate due to the Covid-19 situation in the country, hence the delay in filing the application on June 12, 2020.
3. The applicant believes that his intended appeal has good chances of success and urges this Court to exercise its discretion in his favour, contending that he is not personally to blame for the delay.
4. The respondent opposed the application through a replying affidavit sworn by its advocate, who stated, inter alia, that the delay in filing the application was not well explained; that the applicant's intended appeal has no chances of success; and that the respondent will be prejudiced if the application is allowed.



5. I have considered this application in light of the settled principles that guide this Court in an application for extension of time as set out in a plethora of the Court's decisions, among them being *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231.
6. I am satisfied that the delay has been well explained. The applicant's advocate failed to notify him about the judgment until April 25, 2020 when he sent him a WhatsApp message. It was not easy for the applicant to move around to look for an advocate after the one who was on record for him declined instructions to act any further.
7. The applicant's supplementary affidavit sets out what he believes to be arguable grounds of appeal, and I think the intended appeal is not frivolous.
8. The respondent shall not suffer such prejudice as may not be compensated by an award of costs should the intended appeal fail.
9. Consequently, I grant leave to the applicant to file and serve a notice of appeal within fourteen (14) days from the date of delivery of this ruling. The costs of this application shall abide the outcome of the intended appeal.

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

D. K. MUSINGA, (P)

JUDGE OF APPEAL

.....

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

