



REPUBLIC OF KENYA



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Chepkoech v Mau Tea Multipurpose Co-operative Society Limited (Civil Application E002 of 2020) [2022] KECA 1196 (KLR) (26 October 2022) (Ruling)

Neutral citation: [2022] KECA 1196 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E002 OF 2020
F SICHALE, JA
OCTOBER 26, 2022**

BETWEEN

CATHERINE CHEPKOECH APPLICANT

AND

**MAU TEA MULTIPURPOSE CO-OPERATIVE SOCIETY
LIMITED RESPONDENT**

(Being an Application for Extension of Time to file Notice and Record of Appeal in an intended appeal against the judgment of the Employment and Labour Relations Court at Kericho (Mbaru J), dated 24th August 2020 in (ELRC Cause No. 48 of 2019)

RULING

1. The application before me sitting as a Single Judge is a motion dated 28th September 2020, brought pursuant to the provisions of Rule (2) (b) of the *Court of Appeal Rules*, in which Catherine Chepkoech (the applicant herein), seeks extension of time within which to file Notice and Record of Appeal against the judgment of Mbaru, J dated 24th August 2020.
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant who deposed inter alia that the matter had proceeded in open Court and on 13th July 2020; the orders of the Court were that hearing was marked as closed and both parties were to proceed and file and exchange written submissions and the matter be mentioned on 28th July 2020.
3. That, she vigilantly waited to be informed of the judgment date, only to be surprisingly informed on 18th September 2020 by the Court registry that judgment had already been read in open court on 24th August 2020 and that failure to lodge the Notice of Appeal in time was not deliberate but rather due to the failure of the Court to notify her advocate on record of the judgment date and that she was very keen in pursuing this appeal, despite the delay which was attributable to the Court failing to advise her of the judgment date which mistake should not be visited upon her.



4. The motion is opposed vide a replying affidavit sworn by the respondent on 12th September 2022, who deposed inter alia that the applicant had not filed a Notice of Appeal or a Record of Appeal within the stipulated timelines.
5. It was submitted for the applicant that from a perusal of the Court records and file, it was not clear how the date of the judgment was issued as there are no proceedings in Court records of any orders issued on 28th July 2020, fixing the matter for judgment on 24th August 2020 and that the reason for the delay in lodging the appeal in time is that the judgment was rendered without notice to her or her advocate and that further she had moved timeously and with promptitude to file the instant application as she got to know about the judgment in this matter on 18th September 2020 and proceeded to file the instant application on 28th September 2020.
6. On the other hand, it was submitted for the respondent that the applicant was not diligent in her pursuit of her case before the Superior Court and she was not deserving of exercise of the discretion of this Honourable Court in her favour and that further there was unexplained delay in filing the instant application on 28th September 2020.
7. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the rival submissions by the parties, the cited authorities and the law.
8. The principles upon which this Court exercises its discretion under Rule 4 are firmly settled. The Court has wide and unfettered discretion in deciding whether to extend time or decline the same. However, in exercising its discretion the Court should do so judiciously.
9. See *Mwangi v Kenya Airways Limited* (2003) KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge Should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus:

“It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are; first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”
10. In the instant case, and as regards the length of the delay, the impugned judgment was delivered on 24th August 2020. The applicant contends that she was not aware about delivery of the judgment till 18th September 2020, by which time the prescribed period for lodging the Notice of Appeal had lapsed whereas the instant application is dated 28th September 2020. There has therefore been a delay of about 10 days in filing the instant application from 18th September 2020, when the applicant contends she became aware of the judgment to 28th September 2020 when the instant application was filled, which delay in my considered opinion is not inordinate.
11. Regarding reasons for the delay, the applicant contends that the same was not deliberate but was due to failure by the Court to notify her counsel on the date for delivery of judgment. Indeed, the Superior Court on 13th July 2020, had ordered that the hearing be marked as closed and further directed the parties to file and serve written submissions and thereafter the matter was slated for mention on 28th July 2020 to confirm compliance. It is therefore not clear how the date of judgment of 24th August



2020 was given. The judgment of the Court further does not indicate whether the parties were present or not when the judgment was being delivered.

12. In view of the above, I am satisfied that the delay herein has been explained to the satisfaction of this Court and I find the reasons given for the delay to be plausible.
13. With regard to the possibility of the appeal succeeding, I have looked at the annexed draft Memorandum of Appeal and I am satisfied that the applicant has an arguable appeal worthy of consideration by the Court. Of course, I am alive to the fact that I cannot say more regarding this issue lest I embarrass the bench that will be eventually seized of the appeal.
14. As regards prejudice, the respondent has not demonstrated the prejudice it would suffer if the instant motion were to be allowed.
15. Given the circumstances, I find that the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time to file the Notice of Appeal.
16. Accordingly, the applicant's motion dated 28th September 2020 is meritorious and the same is hereby allowed in terms of prayer (a) thereof.
17. The applicant shall file and serve the Notice of Appeal with 7 days from the date of this ruling and Record of Appeal within 60 days from the date of lodging the Notice of Appeal failure to which these orders shall stand vacated.
18. The costs of this motion shall abide the outcome of the intended appeal.

DATED AND DELIVERED AT NAKURU THIS 26TH DAY OF OCTOBER, 2022.

F. SICHALE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

