



REPUBLIC OF KENYA



KENYA LAW
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Marasi v Board of Management, Geturi Mixed Secondary School (Civil Application E047 of 2021) [2022] KECA 1083 (KLR) (7 October 2022) (Ruling)

Neutral citation: [2022] KECA 1083 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E047 OF 2021
PO KIAGE, JA
OCTOBER 7, 2022**

BETWEEN

RICHARD NYAUNDI MARASI APPLICANT

AND

**BOARD OF MANAGEMENT, GETURI MIXED SECONDARY
SCHOOL RESPONDENT**

(An application for extension of time to file and serve the Memorandum of Appeal and Record of Appeal against the judgment of the Employment and Labour Relations Court at Kisumu (M. Onyango, J.) dated 8th June, 2017 in ELRC Cause No. 357 of 2015)

RULING

1. The applicant, Richard Nyaundi Marasi, has filed a notice of motion dated November 9, 2020 seeking the following orders;
 1. That the Honourable Court be pleased to extend time to serve the Notice of Appeal dated June 19, 2017 against the Judgment of the Employment and Labour Relations Court at Kisumu (Hon. Maureen Anyango-Judge) delivered on June 8, 2017 in Kisumu ELRC Cause No. 357 of 2015.
 2. That the Honourable Court be pleased to extend the time limited for the applicant to file and serve the Respondents with the memorandum of appeal and record of appeal.
2. The application is based on 7 grounds on the face of it. The applicant deposed that the impugned judgment, which dismissed his statement of claim, was delivered on 8th June 2017. Aggrieved, the appellant instructed his then advocates to appeal against the judgment. A notice of appeal was lodged on June 27, 2017. Thereafter, there was a breakdown in communication hence the advocates never filed nor served the memorandum and record of appeal. On October 21, 2020, the applicant appointed his current advocates on record who, according to him, are keen to prosecute the appeal to its logical



conclusion. The applicant averred that the appeal raises arguable issues and has a high chance of success. He avowed that the respondent will not suffer any prejudice should the Court grant them this relief.

3. The respondent confirmed that the notice of appeal and the letter bespeaking the proceedings was served on it on June 28, 2017. After 3 years and 20 days, the applicant has filed this application for extension of time without a reasonable excuse as to the delay. The issue of communication breakdown between the appellant and his former advocates does not hold water because he has not demonstrated why he did not procure the services of another law firm as soon as he discovered the mishap. Moreover, this application dated 9th November 2020 was served on the respondent on 1st July 2022. Service of this application after almost 2 years is against the rules. The respondent contended that the applicant has not come to court in good faith nor with clean hands. He urged the Court to dismiss the application with costs.
4. In the exercise of my free and unfettered discretion in this Rule 4 application, my considerations shall be guided by the holding of this Court in Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees, Civil Application No. 190 of 2019 where the factors to consider were stated as;

"Some of the considerations, 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."
5. From the record, it is evident that this application was filed 3 years after the notice of appeal was lodged. The reason proffered was that there was a communication breakdown between the applicant and his former advocates. However, the applicant did not demonstrate the steps he took in an effort to have his appeal prosecuted. Furthermore, he has failed to explain why it took him 3 years to discover the said miscommunication and why it took him so long to appoint a new advocate. Since this relief is a creature of discretion, the Court must be satisfied that the delay has been reasonably explained. See Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR.
6. It is plain to see that the applicant went to slumber as soon as the notice of appeal was filed only to wake from it 3 years later and now seeks to be granted time to right the wrong. Furthermore, the long and inordinate delay in service of this application to the respondent is another eloquent indicator of his indolence. I find that the delay was inordinate and, the explanation proffered wholly implausible and non-persuasive.
7. In the result, I decline to grant the prayer to extend time. I accordingly dismiss the application in its entirety with costs.

DATED AND DELIVERED AT KISUMU THIS 7TH DAY OF OCTOBER, 2022

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed



DEPUTY REGISTRAR

