



REPUBLIC OF KENYA



KENYA LAW
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Althaus Management & Consultancy Limited v Kenya Revenue Authority (Civil Appeal (Application) 383 of 2018) [2022] KECA 1258 (KLR) (7 November 2022) (Ruling)

Neutral citation: [2022] KECA 1258 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 383 OF 2018
LK KIMARU, JA
NOVEMBER 7, 2022**

BETWEEN

ALTHAUS MANAGEMENT & CONSULTANCY LIMITED APPLICANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

(An application for extension of time to file and serve the record of appeal against the ruling and decree of the High Court of Kenya (Odunga, J.) dated 5th February, 2018 in Nairobi Misc. Civil Application No. 393 of 2014)

RULING

1. The applicant, Althaus Management & Consultancy Limited was aggrieved by ruling rendered by the High Court (Odunga, J) on February 5, 2018 in High Court Misc Civil Application No 393 of 2014 by which the court declined its application to have an officer of the respondent cited for contempt of court. They filed a notice of appeal indicating their intention to appeal to this court on February 7, 2018. They simultaneously applied to be supplied with certified typed copies of the proceedings and the ruling to enable them prepare a record of appeal.
2. According to the applicant, they were unable to obtain the duly certified copies of the proceedings and judgment in time because a clerk assigned to pursue the same misled the advocate that he had received negative feedback from the court. The advocate realized that he had been given false information when another clerk was sent to the court and discovered that the proceedings had already been typed and were ready for collection. Unfortunately, at the time, the sixty (60) days period by which they were required to file the record of appeal had lapsed. Nonetheless, the applicant proceeded to file the record of appeal on October 19, 2018 which was nine (9) days beyond time.
3. The applicant therefore filed the present application under rule 4 of the [Court of Appeal Rules](#) seeking extension of time to lodge and serve the notice and the record of appeal. The application is supported



by the grounds on the face of the application and the annexed affidavit of Walter Amoko, the advocate for the applicant. The application is unopposed. The respondent did not file any response to the application.

4. This court has considered the application and the written submissions by the applicant. Under rule 4 of the Court of Appeal Rules 2022, this court has unfettered discretion to extend time for a party in an appeal to do what it was supposed to do within the time stipulated by the rules. The court in *Fakir Mohammed vs Joseph Mugambi & 2 Others [2005] eKLR* held thus:

' As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of this parties, whether the matter raises issues of public importance, are all relevant but not exhaustive factors.'

5. In the present application, it is clear to the court that the applicant has made a case for this court to exercise its discretion in their favour. The explanation given by the application in the delay in filing the appeal is excusable. The advocate had to rely on information given to him by his clerk in respect of the typed proceedings, which information unfortunately turned out to be false. It would have been ideal if the latter clerk swore a supporting affidavit to the assertion made by the advocate. No matter. What is evident to this court is that the period of delay i.e nine (9) days is not so inordinate as to constitute an unreasonable delay.
6. In the premises therefore, the applicant is granted leave to lodge and serve the notice of appeal and the record of appeal. The same shall be filed and served within thirty (30) days. There shall be no orders as to costs as the application was unopposed.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER, 2022.

L KIMARU

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

