



**University of Nairobi v Songa Ogoda & Associates (Civil Appeal (Application)
240 of 2020) [2022] KECA 1252 (KLR) (7 November 2022) (Ruling)**

Neutral citation: [2022] KECA 1252 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 240 OF 2020
LK KIMARU, JA
NOVEMBER 7, 2022**

BETWEEN

UNIVERSITY OF NAIROBI APPLICANT

AND

SONGA OGODA & ASSOCIATES RESPONDENT

(An application for extension of time to file an application for leave to appeal to the Court of Appeal against the ruling and order of the High Court of Kenya (F. Tuiyott, J.) dated 20th July, 2020 in Nairobi HC Misc. Cause No. E024 and E089 of 2019)

RULING

1. The applicant, University of Nairobi, filed a notice of motion substantially pursuant to rules 4, 41, 44 and 45 of the [Court of Appeal Rules, 2022](#) seeking the following orders from the court:

' That time within which the motion filed herein, seeking leave to appeal to this honourable court, against the ruling and order of the High Court of Kenya at Nairobi (Hon Mr Justice F Tuiyott) given on July 20, 2020 be extended by 9 days so that the motion which was filed in this honourable court on August 12, 2020 be deemed to have been filed and served on time.'
2. The application is supported by the grounds on the face of the notice of motion and the annexed affidavit of Prof Kiama Stephen Gitahi, the Vice-Chancellor of the applicant. In summary, the applicant states that the ruling which is the subject of the application was delivered virtually by the court on July 20, 2020.
3. Being aggrieved by the decision, the applicant sought to be provided with a copy of the ruling which was ultimately supplied to it on August 3, 2020. Due to the Covid-19 restrictions at the time, the applicant could not physically file the application, therefore, necessitating online filing which also had challenges at the time. Ultimately, the applicant was able to file the application on August 12, 2020.



The applicant therefore explains that the period of nine (9) days between the August 3, 2020 and August 12, 2020 when it was unable to file the notice of motion, was due to circumstances and events beyond its control. The applicant urged the court to extend time so that the motion is deemed to have been properly filed and served.

4. The application is not opposed. The respondent did not file any response to the application. This court has read the application and the written submissions of the applicant's counsel. 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, this court is persuaded that indeed the applicant made a case for this court to exercise its discretion in its favour. The explanation given by the applicant for the delay in lodging the motion in time is excusable. This court takes judicial notice of the situation that prevailed at the time during the height of the Covid-19 pandemic and the resultant interventions by the government during lockdowns of certain localities to control the spread of the virus. The court also takes judicial notice of the fact that there were teething challenges when the judiciary rolled out the online filing system which challenges have since been resolved. It is clear to this court that the circumstances explained by the applicant are excusable and in the premises therefore, this court will allow the application.
6. The application dated October 8, 2022 is allowed in the following terms:
- i. The time within which the notice of motion filed herein, seeking leave to appeal to this court against the ruling and order of the High Court of Kenya at Nairobi (Hon F Tuiyott, J) given on July 20, 2020, is hereby extended by nine (9) days so that the motion which was filed in this court on August 12, 2020 is hereby deemed to have been properly filed and served on time.
 - ii. There shall be no orders as to costs.

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

