



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: OKWENGU, KIAGE & SICHALE, JJA.)

CIVIL APPLICATION NO. 1 OF 2019

BETWEEN

OJILONG ISUBA *Alias* HUMPHREY.....1ST APPLICANT

LEONARD JOSHUA IKAROT.....2ND APPLICANT

BEN OJILONG..... 3RD APPLICANT

BRAMWEL OJILONG.....4TH APPLICANT

ALEX IPALEI OJILONG.....5TH APPLICANT

ANDREW ISUBA OJILONG.....6TH APPLICANT

AND

SIMON MUTORO IRARU (DECEASED)

JEAN OMOYO IRARU.....1ST RESPONDENT

GEORGE EMASAIT OMOYO.....2ND RESPONDENT

(Being an application for extension of time to file Notice of Appeal and Record of Appeal out of time in the intended appeal from the judgment and decision (Hon. Justice Tanui, J) dated 3rd June, 1996 (Hon. Chitembwe, J.) delivered by (Hon. Lenaola, J) dated 15th April, 2010 at Kakamega High Court.

RULING OF THE COURT

[1] On 26th of February, 2019 **Hon. Otieno Odek, JA** exercising his discretion as a single Judge under **Rule 4** of the **Court Rules**, delivered a ruling in which he dismissed a motion filed by the applicants seeking to have time extended to enable them file an appeal out of time against the judgments of the High Court (**Tanui, J** delivered on 3rd June, 1998 and **Chitembwe, J** delivered on 15th April, 2010).

[2] The applicants who are in person are now before us as a full bench under **Rule 55(1)(b)** of the **Court Rules**. Apart from indicating in their letter that they are aggrieved by the decision/ruling of the single Judge, the applicants have not given any reason as to why this Court should interfere with the ruling of the Judge. Under **Rule 4** of the Court Rules, the single Judge had unfettered discretion to consider the application for extension of time and either grant it or reject it. In his ruling the learned Judge carefully considered the applicants' motion, being guided by the principles stated in **Nicholas Kiptoo Arap Korir -vs IEBC, Civil Application No. 16 of 2014**. The learned Judge found that the applicants' motion was brought after an inordinate delay of over 21 years and that the delay had not been adequately explained.

[3] The applicants' reasons for the delay were that: they did not receive good legal advice from the firms of advocates who acted for them, and that they did not have funds to enable them pursue the appeal. Having examined the application that was before the Judge, we cannot fault the learned Judge. It is clear that the period of delay is inordinate and the reasons given are completely unsatisfactory.

[4] The applicants' real motive in attempting to revive a matter that was determined 21 years ago appears to be an attempt to have a second bite of the cherry. That is abuse of the court process which we cannot allow. Indeed, it would not be consistent with section 3A & B of

the Appellate Jurisdiction Act, and Court of Appeal Rules whose object, is amongst others, to facilitate the just and expeditious disposal of appeals, and places an obligation on the Court to ensure efficient use of judicial time and timely disposal of proceedings.

[5] Finally, the learned Judge exercised his unfettered discretion and we can only interfere if that discretion was not properly exercised. In this case the Judge properly considered the law and addressed the issues appropriately.

We find no merit in this application and accordingly dismiss it with costs.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.

HANNAH OKWENGU

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JUDGE OF APPEAL

P. O. KIAGE

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JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR