



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: OUKO, (P) (IN CHAMBERS))

CIVIL APPLICATION NO. 4 OF 2020

BETWEEN

OTIENO, RAGOT & COMPANY ADVOCATES.....APPLICANT

AND

CHEMELIL SUGAR COMPANY LIMITED.....RESPONDENT

(An application for extension of time for filing the Notice of Appeal lodged in the

Court Registry at Kisumu on 22nd November, 2019 filed against the

Ruling and Decree of Hon. Lady Justice Cherere, J.

dated 9th October, 2019 in HCCC No. 99 of 2019)

RULING

On the same day, the High Court (Cherere, J.), determined HCCC No. 95, 97 of 2019 which are the subject matters of my ruling in Civil Application Nos. 7 and 8 of 2020, she too delivered a ruling in HCCC No. 99 of 2019, all relating to the same subject matter: advocate-client bill of costs.

For legal services rendered by the applicant to the respondent, the former took out a motion for the adoption of the certificate of costs and for interest on Kshs. 158,452.40 from 19th April, 2014, being the date when the applicant presented its bill for settlement by the respondent. This was a specific prayer. And since the respondent did not attend before the Judge, the prayers were granted as prayed. It was not until the applicant finally got to see the decree that it noticed that the learned Judge had awarded the interest from 14th July, 2019. By the time this was discovered, the applicant was already out of time to bring an appeal, to challenge only the part that placed the effective date on 14th July, 2019.

Because the applicants cannot do so as time for doing so has lapsed, they have now moved me to extend time within which to lodge the notice of appeal and consequently the notice of appeal dated 21st November, 2019 be deemed to be properly filed. Like in the rest of the applications arising from impugned decision, the applicant has asked me to excuse the lateness of 29 days, and explained it on the fact that they had assumed that the pronouncement by the Judge that the application was granted as prayed reflected what the applicant had sought in its entirety; that it was too late and time had lapsed when they discovered the omission.

In exercising my discretion, guided by **Rules 4 and 75(2)** of the Court of Appeal Rules, as well as the past decisions of the Court, I am satisfied that the facts in the matter meet the threshold laid out in **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi** (Civil Application No. Nai 255 of 1997); a delay of 29 days is not inordinate, the explanation proffered by the applicant is plausible and I see no prejudice to the respondent by allowing this application, and though the merit of the appeal remains the preserve of full bench, the appeal is likely to succeed.

In the result, this application is allowed with no orders as to costs and leave is granted to the applicant to lodge and serve the notice of appeal within 14 days of the date of this ruling.

Dated and delivered at Nairobi this 19th day of March, 2021.

W. OUKO, (P)

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR