



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: D. K. MUSINGA, J.A.)

CIVIL APPEAL NO. 72 OF 2019

BETWEEN

THE HON. ATTORNEY GENERAL.....APPELLANT

AND

ELLEN NYAMBURA MACHARIA (Suing as the Administrator

of the estate of MAJOR EDWIN MACHARIA).....RESPONDENT

(Being an application for extension of time to file and serve Record of Appeal out of time from the Judgment of Employment and Labour Relations Court of Kenya at Nairobi (O. Makau, J.) dated 9th March 2018

in

E.L.R.C Petition No. 47 of 2012.)

RULING

1. The appellant's Notice of Motion dated 19th November 2019 seeks extension of time so that the record of appeal filed on 27th February 2019 is deemed as properly filed. The judgment sought to be appealed from was delivered on 9th March 2018. The appellant was ordered to pay the respondent a sum of **Kshs.2,000,000** as general damages plus interest and costs.
2. The appellant filed a notice of appeal on 15th March 2018 and applied for certified copies of proceedings. The record of appeal was prepared and filed on 1st February 2019 but was rejected by the registry because it was not well prepared. The appellant's counsel stated that due to inadvertence the record of appeal was not filed in time. No specific reasons were given for the delay.
3. The respondent opposed the application. She stated, *inter alia*, that the appellant had not given sufficient reason for the delay – 102 days; that on 27th March 2019 she filed an application seeking to have the appeal struck out because it was filed out of time without leave and that is what prompted the current application; that the application to strike out the appeal had not been listed for hearing, and for those reasons urged this Court to dismiss the application.
4. The principles that guide this Court in an application of this nature are well known. The Court considers the length of the delay, the reason(s) for the delay; possibly the chances of success of the appeal; the prejudice that each party may suffer depending on how the Court exercises its discretion; the conduct of the parties, among others.
5. In this application, the proceedings were supplied on 19th September 2018, but the record of appeal was not filed until 27th February 2019. The delay was of 102 days which was not explained. It is not sufficient to state that the delay was inadvertent, such inordinate delay must be properly explained if an applicant desires to have the Court exercise its discretion in his favour. In **Abdul Azizi Ngoma v Mungai Mathayo [1976] KLR 61** this Court held that:

“We would like to state once again that this Court’s discretion to extend time under rule 4 only comes into existence after ‘sufficient reason’ for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.”

6. There has been inordinate delay in filing this application that has not been explained by the applicant. Before surmounting that hurdle, there would be no basis of considering the other factors. I find this application devoid of merit and dismiss it with costs to the respondent.

Dated and delivered at Nairobi this 23rd day of April, 2021.

D. K. MUSINGA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR