



IN THE COURT OF APPEAL

AT NAIROBI

[CORAM: SICHALE JA: (IN CHAMBERS)]

CIVIL APPLICATION NO. E342 OF 2020

BETWEEN

NATION MEDIA GROUP LIMITED.....APPLICANT

VERSUS

ANDREW MUHOLO TEYIE.....RESPONDENT

*(Being an Application for Extension of Time to file a Record of Appeal against the Judgment of the Employment & Labour Relations Court (Abuodha, J) dated 24<sup>th</sup> May 2019)*

IN

**(Nairobi ELRC Petition No. 539 OF 2016)**

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**RULING OF THE COURT**

Before me is a motion dated 2<sup>nd</sup> November, 2020 and brought pursuant to the provisions of Sections 3A and 3B of the Appellate Jurisdiction Act, Rules 4 and 82 (1) of the Court of Appeal Rules 2010, in which Nation Media Group Limited (*the applicant herein*), seeks the following orders:

“1. Spent.

2. This Honourable Court be pleased to grant an Order for extension of time for filing of the Record of Appeal against the Judgment in ELRC Petition No. 539 of 2016; Andrew Muholo Teyie Versus Nation Media Group Limited delivered before the Hon Justice Abuodha J.N on 24<sup>th</sup> May 2019 and the decree emanating therefrom.

3. The costs of the application be provided for.

4. This Honourable Court be pleased to grant any other Orders it deems just and expedient.”

The motion is supported by the grounds on the face of the motion and an affidavit sworn by **Sekou Owino**, the applicant’s Head of Legal and Training who deposed *inter alia* that vide a judgment delivered on 24<sup>th</sup> May 2019, in ELRC Petition No. 539 of 2016, the Employment and Labour Relations Court (**Abuodha, J**) directed *inter alia* that the termination of the respondent’s employment by the applicant was unfair and awarded him a sum of Kshs 4,265,390 being 10 months salary as compensation for unfair termination of employment.

That, through a Notice of Appeal filed before the superior court on 27<sup>th</sup> May, 2019, the applicant had appealed against the aforesaid decision in its entirety and made several attempts to obtain the certified copies of the typed proceedings to enable it prepare its Record of Appeal and requested for a

Certificate of Delay with the aim of highlighting the time taken by the superior court in preparation of the typed proceedings.

That, non-responsiveness from the courts registry rendered the applicant unable to file and serve its Record of Appeal within the 60 day timeframe owing to *inter alia* an unforeseen delay in obtaining certified copies of the typed proceedings and the Certificate Delay, both of

which form part of the Record of Appeal. He further deponed that the firm of advocates on record for the applicant had witnessed unforeseen administrative changes since the date of filing the Notice of Appeal as the advocate who was personally seized of this matter on behalf of the applicant had left the firm in unexpected fashion. In addition, that in view of the above, the delay in filing of the Record of Appeal was reasonable and had been sufficiently explained.

The application was opposed vide a replying affidavit sworn by the respondent herein **Andrew Muholo Teyie** dated **30<sup>th</sup> November, 2020** who deponed *inter alia* that the application was not merited as the applicant was not keen on complying with court orders and directions regarding the intended appeal as evidenced by the general conduct of the applicant and his advocates and that the applicant was less than candid in alleging that the superior court registry delayed in issuing proceedings and a Certificate of Delay as the delay and indolence was on part of the applicant as evidenced by the correspondence from the superior court registry and the Certificate of Delay and that on **9<sup>th</sup> March, 2020**, the superior court issued a notice to the parties to the effect that the proceedings were ready for collection but the applicant collected them on **28<sup>th</sup> September 2020**.

He further deponed that the applicant had taken advantage of the stay orders that were issued by the superior court in delaying to prosecute its appeal, which stay orders in any event lapsed the moment the applicant did not comply with the conditional stay issued by the superior court.

It was submitted for the applicant that the delay in instituting the intended appeal was reasonable and not inordinate as the same was occasioned by the non-responsiveness on part of the superior court which affected its ability to file its Record of Appeal on time and that delay was beyond its control and had been explained. Consequently, the applicant urged the court to allow the application as prayed.

On the other hand the respondent reiterated the contents of its replying affidavit sworn on **30<sup>th</sup> November, 2020**, and submitted that considering the totality of the events in this matter, the chronology of events from the time the Notice of Appeal was lodged to the filing of this application, and the conditions for grant of the prayers sought, the application lacked merit and was ripe for dismissal with costs.

I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, and the rival submissions by the parties, the cited authorities and the law.

The applicant's motion is brought *inter alia* under **Rule 4** of this Court's Rules. The said Rule provides:

**"4.**

***Extension of time***

***The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.***"

The principles upon which this court exercises its discretion under Rule 4 are firmly settled. The court has wide unfettered discretion whether to extend time or not. However, in exercising its discretion the court should do so judiciously, and in accordance with the principles set out in **Leo Sila Mutiso V. Rose Hellen Wangari Mwangi – Civil Application No. Nai 251 of 1997** where the court stated:

***"It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court takes into account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted."***

In the instant case and with regard to the length of the delay, the impugned judgment that is sought to be appealed against was delivered on **24<sup>th</sup> May, 2019**, whereas the instant application is dated **2<sup>nd</sup> November, 2020**. The applicant contends that the delay in preparing and filing the Record of Appeal was due to non-responsiveness on part of the superior court registry and change in the applicant's firm of advocates, as the advocate who was personally seized of this matter on behalf of the applicant had left the firm.

A Certificate of Delay annexed to this application from the superior court clearly shows that by a letter dated **9<sup>th</sup> March, 2020**, the applicant's advocates were informed that the said proceedings were ready for collection upon payment of court fees. The Certificate of delay further indicates that the said proceedings were paid for and collected on **28<sup>th</sup> September 2020**, a period of over **5 months** when the said firm of advocates was informed that proceedings were ready for collection. No explanation has been forthcoming from the applicant for this delay which in my opinion and considering the circumstances of this case, is no doubt inordinate and the only logical inference that can be made is that the applicant is not keen/serious in prosecuting its appeal.

With regard to reasons for the delay, the applicant further attributed the delay in filing the Record of Appeal due to administrative changes in the firm of advocates which is conducting this matter on its behalf, as the advocate who had the conduct of this matter on its behalf left the firm in unexpected fashion. It has however not been stated who that advocate is and the exact time that he left the firm. Due to the aforesaid reasons, it is my considered opinion that the reasons for the delay have not been sufficiently explained to the satisfaction of this court.

Lastly on prejudice, I am not satisfied that the applicant would suffer prejudice if the instant application is not allowed as the applicant has already deposited the decretal amount in joint account on **6<sup>th</sup> February, 2020**, albeit way beyond the 30 days period that had been stipulated by the superior court.

Taking into totality all the circumstances in this case, I find that the applicant has not demonstrated and satisfied the existence of the principles for consideration by the Court, in the exercise of my unfettered discretion under Rule 4 of the Court as laid out in ***Leo Sila Mutiso case (supra)***, for extension of time to file the intended appeal out of time.

Accordingly, I find the applicant's motion dated **2nd November 2020** to be unmerited and I accordingly dismiss the same in its entirety with costs to the respondent.

**Dated and delivered at Nairobi this 4<sup>th</sup> Day of June, 2021.**

**F. SICHALE**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**