



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KOOME, J.A

(IN CHAMBERS)

CIVIL APPLICATION NO. 119 OF 2019

BETWEEN

FRAN INVESTMENTS LTD.....APPLICANT

AND

G4S SECURITY KENYA LTD.....RESPONDENT

(Being an application for leave to file a notice of appeal against the ruling of the

High Court of Kenya at Nairobi (Gikonyo, J.) dated 18th February, 2015

in H.C.C.C No. 467 of 2009)

RULING

1. Gikonyo, J. by a ruling dated 18th February, 2015 declined to allow the applicant's motion which sought the reinstatement of its suit, **H.C.C.C No. 467** of 2009, after it had been dismissed for want of prosecution on 5th March, 2012. The learned Judge was not convinced that the explanation offered for the delay in prosecuting the suit was satisfactory.
2. Whilst the applicant contends that it was intent on challenging the above decision, it did not file a notice of appeal to that effect within the requisite time frame. As a result, the applicant has lodged the current motion before me seeking extension of time to file the notice of appeal. It attributed the delay to firstly, the court file allegedly not having been traced immediately upon delivery of the impugned ruling. Secondly, the High Court's failure to supply it with the certified proceedings in good time. The applicant urged that the intended appeal was arguable and had high chances of success. Moreover, that it was in the interest of justice for the extension sought to be granted.
3. Despite the parties being served with directions pursuant to this Court's Covid-19 Practice Note and the hearing notice, only the applicant put in its written submissions.
4. Nonetheless, an application for extension of time under **Rule 4** of this Court's Rules, such as in this case, calls for the exercise of my unfettered discretionary power. Some of the factors I ought to consider include the length of the delay; the reason for the delay; the degree of prejudice to the respondents if the application is granted, and, possibly, the chances of the success of the intended appeal. See **Muringa Company Limited vs. Archdiocese of Nairobi Registered Trustees [2020] eKLR.**
5. Pursuant to **Rule 75(2)** of this Court's Rules, the notice of appeal should have been lodged within 14 days of the delivery of the impugned ruling, that is, on or before the 4th March, 2015. Taking into account that the current motion was filed on 15th April, 2019, the delay was for a period of almost 4 years.
6. I find that the aforementioned delay was inordinate. I say so because it is common ground that the notice of appeal contemplated under **Rule 75(2)** as the name suggest is a mere indication of a litigant's intention to appeal against a decision in its entirety or in part. The form of the said notice is equally set out in the Rules. As such, the explanation given for the delay in filing the same, in my view, is not plausible. To begin with the applicant does not disclose when the court file was eventually traced, if indeed it was missing, or at the very least how the alleged missing file prevented it from filing the notice of appeal.

Furthermore, there is nothing in this Court's Rules which required the applicant to lodge the notice of appeal together with the certified proceedings.

7. Being cognisant that it is not in my place as a single Judge of this Court to determine the merits of the intended appeal, I doubt its arguability.

8. Consequently, the motion dated 12th April, 2019 which was filed in this Court on 15th April, 2019 lacks merit and is hereby dismissed with no orders as to costs.

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

M. K. KOOME

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.