



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: WARSAME J.A. IN CHAMBERS)

CIVIL APPLICATION NO. 19 OF 2020

BETWEEN

MAYA ENTERPRISES LIMITED.....APPLICANT

AND

KENYA REVENUE AUTHORITY.....RESPONDENT

BANK OF BARODA(K) LTD.....1ST INTERESTED PARTY

JKDAS COMPANY LTD.....2ND INTERESTED PARTY

(An application for extension of time to file a notice of appeal against the ruling of the

Constitutional & Human Rights Court at Mombasa (Justice E.K. Ogola)

dated 13th February, 2020

in

Constitutional Petition No. 14 OF 2019)

RULING

The applicant, **Maya Enterprises Limited**, has by a Notice of Motion dated 17th December 2020 brought under Rule 4 and Rule 82 of the Court of Appeal Rules 2010 sought orders for extension of time to file and serve the notice of appeal and record of appeal against the ruling of the Constitutional & Human Rights Court at Mombasa delivered on 13th February 2019. The ruling dismissed the applicant’s application seeking orders restraining the respondent from proclaiming motor vehicles in the applicant’s possession to enforce taxes owed by the 2nd interested party.

The motion was supported by an affidavit by the applicant’s counsel who deponed that the applicant filed its Notice of Appeal on 26th February, 2020 and served the same on 5th March 2020 contrary to the 7 days required by Rule 77, the delay was occasioned by the change in instruction from previous counsel. It was further deponed that the proceedings were certified on 26th February,2020 but due to the covid pandemic which resulted in the closure of the advocates offices and the courts, the applicant could not file the record within the 60 day period stipulated under Rule 82(1); that the delay in serving the notice of appeal and filing the record of appeal was not inordinate and it is in the interest of justice that the application be allowed.

In opposition to the application, the respondent filed an affidavit dated 24th May, 2021 contending that the application was a delaying tactic by the applicant to avoid paying taxes due, that the applicant had also filed an application to stay the ruling of the High Court which was allowed on condition that the applicant furnishes security for taxes but the applicant has failed to abide by the court’s orders and that if the court was to grant the orders sought it should compel the applicant to furnish security for the taxes due by paying the disputed amount of Kshs.2,788,077.00 and Kshs.7,575,477.00.

I have considered the application, the affidavits on record, submissions by counsel and the law. The grant of orders under Rule 4, is unfettered but is nonetheless a judicial one. The relevant factors to be considered in an application for extension of time is the length of delay; the reason for delay; the chances of appeal succeeding and the degree of prejudice (if any) likely to be caused to the respondent if

extension is granted. (See Leo Sila Mutiso -v- Hellen Wangarir Mwangi, Civil Application No. Nai 255 of 1997).

Having considered the reasons given by the applicant, I am satisfied that the delay in serving the notice of appeal and filing the record of appeal is not inordinate and has been explained to my satisfaction. Furthermore, if the applicant is in contempt of court orders as alleged, the respondent can pursue the applicant through the avenues provided by law. Consequently, I grant 14 days within which the applicant should file and serve the notice of appeal and record of appeal.

The application is allowed with no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF JULY, 2021.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR