



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: WARSAME J.A. IN CHAMBERS)

CIVIL APPLICATION NO. 1 OF 2020

BETWEEN

SUMMIT CLOVE LINES COMPANY LIMITED.....APPLICANT

AND

UAP INSURANCE COMPANY LIMITED.....RESPONDENT

(An application for extension of time to file a notice of appeal and record of appeal against the ruling of the High Court at Mombasa (Justice Chepkwony) dated 3rd March, 2020

in

HCCC NO. 43 OF 2017)

RULING

In a Notice of Motion dated 21st December 2020 the applicant, **Summit Clove Lined Company Limited** has invoked the Court's jurisdiction under **Rule 4** of the Court of Appeal Rules, 2010 seeking extension of time to file a Notice of Appeal, and Record of Appeal against the ruling and order of the High Court at Nairobi (Justice Chepkwony) delivered on 10th March, 2020.

The applicant contends that the court intimated that the impugned ruling would be delivered on 18th March 2020 yet the ruling was delivered on 10th March 2020 behind their back without notice to both parties. Consequently, they were unable to file the Notice of Appeal on time.

Fundamentally, the applicant who is aggrieved by the Court's ruling wishes to appeal to this court out of time since the time for filing both the Notice of Appeal and Record of Appeal have both lapsed.

The application before me was filed on 11th December 2020, which is a period of nine months since the ruling was delivered. The applicant in its further replying affidavit dated 10th May 2021 states that it became aware of the ruling in early October 2020 when it was making a routine enquiry at the registry. There is no proof of the said enquiry and no explanation has been offered for the period of delay between the discovery that the ruling was delivered and the filing of the current application, which is a period of two months.

The principles that govern the exercise of discretion in an application for extension of time such as this are well known. They include but are not limited to the length of the delay, the reason for the delay; (possibly) the chances of the appeal succeeding if the application is granted; and, the degree of prejudice to the respondent if the application is granted (See the case of **Leo SilaMutiso V. Rose Hellen Wangari Mwangi (1999) 2 EA 231**).

I have examined the affidavits in support of the application, and it is my view that they betray a lack of expedition by the applicant. It is incumbent upon the applicant to explain any delay in abiding by the rules of this court. Without explanation, there would be no basis for the exercise of any discretion.

The application is dismissed 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