



4MB Mining Limited c/o Ministry of Mining, Juba Republic of South Sudan v Union Link Logistics & 3 others (Civil Appeal (Application) 44 of 2020) [2021] KECA 124 (KLR) (5 November 2021) (Ruling)

Neutral citation: [2021] KECA 124 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) 44 OF 2020
SG KAIRU, JA
NOVEMBER 5, 2021**

BETWEEN

4MB MINING LIMITED C/O MINISTRY OF MINING, JUBA REPUBLIC OF SOUTH SUDAN APPLICANT

AND

UNION LINK LOGISTICS 1ST RESPONDENT

FREIGHT FORWARDERS (K) LIMITED 2ND RESPONDENT

MISNAK INTERNATIONAL (UK) LIMITED 3RD RESPONDENT

TOTAL LINK LOGISTICS 4TH RESPONDENT

(An application for extension of time for filing this application for leave to lodge appeal against the ruling of the High Court of Kenya at Mombasa (Chepkwony, J.) delivered on 14th May, 2020 in High Court Civil Case No. 30 of 2018)

RULING

1. In its application dated 13th July 2020, the applicant, 4MB Mining Limited c/o Ministry of Mining, Juba Republic of South Sudan seeks the following orders:
 - a. Enlargement of time for filing the present application for leave to appeal against the ruling of the High Court given on 14th May 2020.
 - b. Leave to appeal against the said ruling.
 - c. Admission of the record of appeal lodged on 10th July 2020.



- d. Stay of proceedings in Mombasa HCCC 30 of 2018 in so far as such proceedings relate to taxation of any costs in favour of the 1st and 2nd respondents pursuant to the ruling of 14th May 2020.
2. The application is made under Sections 3, 3A and 3B of the [Appellate Jurisdiction Act](#); Rules 5(2)(b), 4, 31, 39 and 42 of the Court of Appeal Rules.
 3. As a single Judge, I can only deal with prayer a) above for extension of time. All the other prayers are matters for the Court in accordance with Rule 53 of the Court of Appeal Rules. For that reason, this ruling is confined to the application for extension of time under Rule 4 of the Court of Appeal Rules.
 4. I have considered the request for extension of time and the submissions by learned counsel Mr. Ngunze. Mr. Onyango, learned counsel who appeared for the 1st and 2nd respondents did not take a position on the matter. The principles applicable in that regard were stated in the case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi*, Civil Application No. Nai 255 of 1997 (1999) 2 EA 23 where the Court set out guidelines for the exercise of the court's discretion under Rule 4 of the Rules being first, the length of delay; secondly, the reason for 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.
 5. Rule 39 of the Court of Appeal Rules provides that where an appeal lies with the leave of the Court, application for such leave shall be made within 14 days of the decision against which it is desired to appeal. As stated, the decision intended to be challenged was delivered on 14th May 2020. Application for leave should therefore have been presented by 28th May 2020. The present application was not filed until 16th July 2020 and no explanation at all has been offered for that delay. The closest one gets to an explanation is in paragraph 14 of the supporting affidavit where it is deposed that "owing to the strict timelines guiding the lodging of appeals, the appellant has lodged a record of appeal on 10 July 20 20 and subsequently this application." The same statement also appears in paragraph 13 of the application itself.
 6. As the Supreme Court stated in [Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014\[2014\] eKLR](#) extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; that extension of time is a consideration on a case to case basis; that delay should be explained to the satisfaction of the court; whether there will be prejudice suffered by the respondents if the extension is granted; and whether the application is brought without undue delay.
 7. In the absence of explanation, I am unable to exercise the court's discretion in favour of the applicant. See *Wakaba Ndegwa & another vs. Lucy Nyaguthii [2017] eKLR*.
 8. It is also noteworthy that in the application and in the supporting affidavit, the applicant states that "... it is, strictly speaking, unnecessary to seek leave to lodge appeal against said decision..." in which case the Court has been engaged in vain.
 9. The result is that the request for extension of time in prayer 1 of the application dated 13th July 2020 is hereby declined. I make no orders as to costs.

DATED AND DELIVERED AT MOMBASA THIS 5TH DAY OF NOVEMBER, 2021.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

