



**Kenya Ports Authority v Munyao & 4 others (Civil Appeal (Application)
134 of 2018) [2021] KECA 133 (KLR) (5 November 2021) (Ruling)**

Neutral citation: [2021] KECA 133 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) 134 OF 2018
SG KAIRU, JA
NOVEMBER 5, 2021**

BETWEEN

KENYA PORTS AUTHORITY APPELLANT

AND

JOSEPH MAKAU MUNYAO 1ST RESPONDENT

ELIUS NJOKA 2ND RESPONDENT

STEPHEN BAYA MWANYULE 3RD RESPONDENT

MWINYI SULEIMAN SIBABU 4TH RESPONDENT

BWANA MOHAMED BWANA 5TH RESPONDENT

(An application for extension of time for certification of the intended appeal against the judgment of the Court of Appeal at Mombasa (Visram, Karanja & Koome, JJ.A) delivered on 11th July 2019 in Court of Appeal Civil Appeal No. 134 of 2018)

RULING

- 1 Following delivery of the judgment of the Court in Civil Appeal No. 134 of 2018 between the parties hereto on 11th July 2019, the applicant, Kenya Ports Authority, filed a notice of appeal pursuant to Rule 31(1) of the *Supreme Court Rules, 2012*. The applicant is of the view, but the respondents disagree, that the intended appeal to the Supreme Court involves matters of general public importance. The applicant proposes to apply to this Court for certification that the intended appeal does indeed qualify as such and for leave to appeal to the Supreme Court. Such application should have been filed within 14 days of the delivery of the judgment on 11th July 2019. That was not done. The applicant by its present application dated 2nd August 2019 seeks an extension of time to do so.



- 2 I have considered the application, the supporting affidavit of Wamuyu Ikegu, the written and oral submissions tendered by Ms. Wetende learned counsel for the applicant and the grounds of opposition and oral submissions tendered by learned counsel for the respondents Mr. Aboubakar. For a start, it seems to me that the reference in this application to Civil Appeal No. 138 of 2018 is a mistake as the judgment to which the application relates is Civil Appeal No. 134 of 2018. That said, the applicable legal principles in applications of this nature 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* wherethe 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.
- 3 In [*Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014\[2014\] eKLR*](#) theSupreme Court of Kenya expressed that 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.
- 4 Following the delivery of the judgment by the Court on 11th July 2019, the applicant had up to 25th July 2019 to apply for certification. The present application was filed 10 days later on 5th August 2019. It has been deposed, and this has not been contested, that following the delivery of the judgment by the Court on 11th July 2019, a copy of the judgment was not released until 22nd July 2019 and two days later, on 24th July 2019, the notice of appeal was lodged. It is asserted that the Registrar of the Court declined to release an uncertified copy of the judgment which would have enabled to counsel for the applicant review and consider the findings in the impugned judgment sooner. In the circumstances, I consider that the delay of 10 days is satisfactorily explained.
- 5 Mr. Aboubakor submitted that the main objection to the request for extension of time is that the intended application has no chance of success at no matter of public importance is involved. While this is a relevant consideration in matters of this nature, I will refrain from addressing the prospects of success of the intended application at this stage to prevent prejudice.
- 6 In the result, I allow the application dated 2nd August 2019 and lodged on 5th August 2019 in terms of prayer 1 thereof. The applicant shall file and serve the application for certification of its intended appeal against the decision of this Court in Civil Appeal No. 134 of 2018 and delivered on 11th July 2019 within 14 days of delivery of this Ruling.

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.

Signed

DEPUTY REGISTRAR

