



**Castle Forest Lodge Ltd v Munene (Civil Application 142 of 2019)
[2021] KECA 310 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 310 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 142 OF 2019
DK MUSINGA, JA
DECEMBER 17, 2021**

BETWEEN

CASTLE FOREST LODGE LTD APPLICANT

AND

WILSON MURIMI MUNENE RESPONDENT

(An application for extension of time to file and serve the record of appeal out of time in an intended appeal from the judgment of the Employment and Labour Relations Court at Nyeri (Byram Ongaya, J.) delivered on 19th May 2017 in ELRC Cause No. 189 of 2016)

RULING

1. The applicant's Notice of Motion dated 14th February 2019 and brought under rule 4 of this Court's Rules, seeks to have the record of appeal lodged against the judgment of the Employment and Labour Relations Court, at Nyeri cause No. 189 of 2016, to be deemed as filed and served in time.
2. The application is supported by an affidavit sworn by Samora Owino of the firm of Kimani & Michuki Advocates, who are on record for the appellant. The deponent states, inter alia, that the judgment sought to be appealed against was delivered on 19th May 2017; that the notice of appeal was filed on 26th May, 2017; that the appellant's advocates requested for typed proceedings on 29th August, 2017; that the proceedings were collected on 9th April, 2018 but the advocate who was dealing with the matter left the law firm before he filed the memorandum of appeal; that the respondent served the applicant's advocates with an application dated 24th October, 2018 seeking to strike out the notice of appeal; that on 18th December, 2017 the appellant deposited a sum of ksh.396,903 in an interest earning account in the names of the advocates of the two parties and the said sum is still held as escrow account.



3. The applicant's advocates state that the failure to file the record of appeal within the statutory timeline was inadvertent and urged this Court to excuse the same, saying that the applicant's intended appeal has high chances of success.
4. The respondent opposed the application. In a replying affidavit sworn by Daniel Rakoro, the respondent's advocate, he states, inter alia, that the trial court in a judgment delivered on 19th May, 2017 awarded the respondent a sum of ksh.396,903.10 together with costs and interest payable by 1st August, 2018; that the notice of appeal was filed on 31st May, 2017 at the trial court but was lodged at this court's registry on 2nd June, 2017; that the applicant applied for copies of proceedings on 30th August, 2017 which was outside the 30 days period allowed by the law as the same should have been filed before 19th June, 2017; that the request for proceedings was not served upon the respondent's advocates as by law required; that there being no application and/or request for proceedings, and no appeal having been filed, the notice of appeal was deemed as withdrawn; that no good reason has been advanced for the delay in filing the record of appeal; that no explanation has been advanced for the delay between 9th April, 2018 and 4th September, 2019, a period of 18 months when the typed proceedings were collected and when the present application was filed; further, that there is no explanation why the application which was drawn on 14th February, 2019 was filed on 4th September 2019, eight months after it was drawn; that the application was served on 28th August, 2020 18 months after it was drawn and 11 months after it was filed.
5. For those reasons, among others, the respondent urges this court to dismiss the application.
6. The application was canvassed by way of written submissions, which I have perused. The principles that guide this Court in an application for extension of time under rule 4 of Court's Rules are well settled and have been reinstated in a plethora of our decisions among them *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2EA 231.

It is not in dispute that there has been inordinate delay on the part of the applicant in filing the record of appeal and the application for extension of time.
7. On 25th August, 2017, the applicant filed an application for stay of execution of the trial Court's judgment which was granted on 16th November, 2017 on condition that the judgment sum be deposited in an interest earning account in the joint names of the advocates for the parties. The applicant's advocates collected the typed proceedings on 9th April, 2018 but they did not file the record of appeal shortly thereafter. The only reason advanced for that failure was that the advocate who was dealing with the matter left the law firm of Kimani and Michuki Advocates.
8. In my view, that is not sufficient explanation for the inordinate delay in filing the record of appeal and the application for extension of time. Even if the advocate who was dealing with the matter left the applicant's Advocates' law firm shortly after 9th of April, 2018, there must have been another advocate who took over the files that were being handled by the previous advocate. No reasonable explanation has been given for the inordinate delay between 9th April, 2018 and 4th September, 2019 when this application for extension of time was filed. Further it is evident that the application was drawn on 14th February, 2019 but was not filed until 4th September, 2019.

The applicant's advocates were very casual in their handling of the intended appeal.
9. In *Andrew Kiplangat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, this Court held that a plausible and satisfactory explanation for delay is the key that unlocks the Court's flow of its discretionary favour.



10. Further, in *Abdul Aziz Ngoma vs. Mungai Mathayo* [1976] KLR 61, this Court held that the Court's discretion to extend time only comes into existence after sufficient reason for extension of time has been established. In this matter, I hold and find that the applicant has not advanced any sufficient reason for the inordinate delay to enable this Court exercise its discretion in the applicant's favour. Consequently, this application is without merit and is dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2021.

D. MUSINGA (P)

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

