



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GATEMBU, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. 95 OF 2020

BETWEEN

NATIONAL HOSPITAL INSURANCE FUND

BOARD OF MANAGEMENT.....APPLICANT

AND

KENYA UNION OF COMMERCIAL FOOD

AND ALLIED WORKERS.....RESPONDENT

(Being an application for extension of time for giving Notice of Appeal and for leave to appeal out of time from the Judgment of the Employment and Labour Relations Court at Nairobi (M. Onyango, J.) delivered on 6th March 2020

in

ELRC Cause No. 1389 of 2018)

RULING

1. By notice of motion dated 2nd April 2020, National Hospital Insurance Fund Board Management, the applicant seeks an order for extension of time and that the notice of appeal dated 10th March 2020 lodged in the Employment and Labour Relations Court be deemed as duly filed.
2. The notice of motion was transmitted to me by email by the Registrar of the Court alongside the supporting affidavit sworn by Aldrin Ojiambo for consideration on 15th April 2020 as scheduled in the cause list.
3. I understand from the Registrar of the Court that the application was served and directions given that it would be considered on the basis of documents transmitted on email in light of the existing scaled down operations of the Court owing to the Corona Virus epidemic. I have not however seen any replying affidavit or opposition to the application.
4. I have considered the material placed before me. The principles applicable in an application for extension of time were stated in **Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014[2014] eKLR** where the Supreme Court of Kenya pronounced 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; whether the application is brought without undue delay; and whether public interest should be a consideration.
5. In the present case, the applicant has explained that being aggrieved by the judgment delivered by the Employment and Labour

Relations Court on 6th March 2020, it promptly prepared a notice of appeal and a letter bespeaking typed proceedings but the clerk who was tasked with filing, having paid for the proceedings, misplaced the notice of appeal and was not able to pay for it on 13th March 2020; that following the announcement by the Judiciary on 15th March 2020 of the scaled down operations of the judiciary on account of the corona virus epidemic, it was only able to file the notice of appeal on 31st March 2020.

6. Having considered the application, I am satisfied that this is a proper case for me to exercise my discretion in favour of the applicant. I accordingly allow the application in terms of prayer 3 of the application dated 2nd April 2020. The notice of appeal dated 10th March 2020 is deemed as duly filed. The costs of the application shall costs in the appeal.

Dated and delivered at Nairobi this 24th day of April, 2020.

S. GATEMBU KAIRU, FCI Arb

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR