



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**[CORAM: SICHALE, JA – IN CHAMBERS]**

**CIVIL APPLICATION NO. 96 OF 2020**

**BETWEEN**

**NATIONAL LAND COMMISSION.....APPLICANT**

**AND**

**DR. SALOME MUNUBI .....1<sup>ST</sup> RESPONDENT**

**DR. FIBIAN LUKALO.....2<sup>ND</sup> RESPONDENT**

**FRANCIS MUGO .....3<sup>RD</sup> RESPONDENT**

**LEONARD OMULLO.....4<sup>TH</sup> RESPONDENT**

**PROFESSOR MOHAMMAD SWAZURI .....5<sup>TH</sup> RESPONDENT**

(Being an application for extension of time to file a Notice of Appeal and Record of Appeal out of time against the judgment of the Employment & Labour Relations Court at Nairobi (Maureen Onyango, J) dated 24<sup>th</sup> May, 2019

**IN**

**NAIROBI ELRC NO. 8 OF 2019)**

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**RULING OF THE COURT**

The applicant, the National Land Commission (NLC) filed a Notice of Motion application dated **17<sup>th</sup> March, 2020**.

In the motion, the applicant sought to have the Notice of Appeal filed on **15<sup>th</sup> October, 2019** be deemed as duly filed and to be allowed to file the record of appeal out of time.

It was contended that the 1<sup>st</sup> to 4<sup>th</sup> respondents were directors of the applicant and their terms of contract expired on **19<sup>th</sup> February, 2019**; that judgment of the ELRC was delivered on **24<sup>th</sup> May, 2019**; that the terms of office of the Commissioners expired on **19<sup>th</sup> February, 2019** and there was no one to issue instructions for the filing of an appeal (or otherwise) until the Chairman of the NLC was gazette on **14<sup>th</sup> October, 2019**.

The motion was opposed. In the 1<sup>st</sup> to 4<sup>th</sup> respondent’s submissions dated **10<sup>th</sup> April, 2020**, it was contended that there was no sufficient reason for the delay in filing the Notice of Appeal as the Ag. CEO continued to issue instructions to NLC lawyers. It was contended that the respondents are to be greatly prejudiced (as ever since April, 2019, no salary has been paid) should this Court be inclined to grant extension

of time.

I have considered the application; the applicant’s supporting affidavit and the rival submissions made by the parties in the absence of respective counsel, given the Cora virus pandemic that has currently afflicted the world. Rule 4 of this Court’s rules empowers this Court to exercise its unfettered discretion in extending the time prescribed by the rules for the doing of any act. The case of **Fakir Mohamed vs. Joseph Mugambi & two others, Civil Application No. Nai. 332 of 2004 (unreported)** outlines the general principles for determining such an application as follows:

*“The exercise of this Court’s discretion under rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted; the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits; the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustively factors.....”*

It has been stated times without number that in the exercise of discretion under Rule 4 of this Court’s Rules, the discretion is not to be exercised capriciously or whimsically. The applicant has explained that the NLC did not have the Commissioners to give the necessary instructions for the filing of an appeal. It was not until a new Chairman of the NLC was gazetted that instructions were received. This was on **14<sup>th</sup> October, 2019.**

In my view, given the lack of Commissioners and the Chairman of the NLC, the Ag CEO may not have been in a position to decide whether an appeal ought to be filed against the judgment of the ELRC. I am therefore of the considered view that the application herein is merited. I hereby allow the motion dated **17<sup>th</sup> March, 2020** and direct that the Notice of Appeal is deemed to have been duly filed. The applicant shall file and serve the record of appeal within sixty (60) days of today’s date. I also direct that the applicant has leave to apply given the partial lock-down of the Courts due to Covid-19 pandemic, in the event that the applicant is unable to obtain proceedings necessary for the compilation of the record of appeal.

Costs of the motion shall be in the intended appeal.

It is so ordered.

***Dated and delivered at Nairobi this 24<sup>th</sup> day of April, 2020.***

**F. SICHALE**

.....

**JUDGE OF APPEAL**

*I certify that this is a*

*true copy of the original*

***Signed***

**DEPUTY REGISTRAR**