



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OKWENGU JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAI 378 OF 2019

BETWEEN

FORMAX INSURANCE BROKERS LIMITED.....APPLICANT

AND

GLORY HOTELS & INVESTMENTS LIMITED.....RESPONDENT

(Being an application for extension of time to file and serve a record of appeal out of

time in an intended appeal from the Judgment and Decree of the High Court of Kenya

at Nairobi (J. Njuguna, J.) delivered on 4th July, 2019 In H.C.C.A. No. 39 of 2017)

RULING

[1] By a notice of motion dated 2nd December, 2019, lodged in Court on 6th December, 2019 the applicant, Formax Insurance Brokers Limited seeks to have time extended to enable it file and serve a record of appeal against the judgement of the High Court (**Njuguna, J**) delivered on 4th July, 2019.

[2] According to the grounds stated in the motion and the affidavit sworn by **Titus Nzuki Wambua (Wambua)**, who is the technical manager of the applicant, judgment was delivered on 4th July, 2019 and the applicant filed a notice of appeal on 17th July, 2019. Thereafter the applicant through a letter dated 16th July, 2019 and copied to the respondent's advocate, requested for certified copies of proceedings and judgment. A receipt has also been availed showing that payment was made on 29th July, 2019. A certificate of delay has been exhibited through which the Deputy Registrar of the High Court confirms that the period between 29th July, 2019 to 8th October, 2019 were required for the typing of the proceedings and judgment. This means that in accordance with Rule 82 of the Court rules, the period of 84 days should be excluded from computation of time. However, the applicant explains that the decree extracted for the judgment was issued on 25th November, 2019 on the same day the certificate of delay was issued and subsequently the application for extension for time was filed.

[3] **Ms. Gichumbi** for the applicant has urged the Court to exercise its discretion in the applicant's favour. She urges that the applicant has a good appeal which raises arguable issues and that the respondent does not stand to suffer any prejudice.

[4] The respondent did not file any replying affidavit in the motion and the learned counsel **Mr. Ondimu**, did not oppose the application.

[5] Under Rule 4 of the Court Rules, this Court has discretion to grant extension of time. However, such discretion must be exercised judicially. It is clear that the applicant filed a notice of appeal within time and that it also applied for certified copies of the proceedings. The letter having been copied to the respondent's counsel, the applicant is entitled to have the period certified as necessary for preparation of the certified copy of the proceedings and judgment, excluded from the computation of time. However, even if this is taken into account, there is still the period between 9th October, 2019 and 6th December, 2019.

[6] The applicant has explained that the certificate of delay was not issued to him until 25th November, 2019 and it is evident that he required that certificate in support of his application. Therefore, the only period that one can say that there has been no proper explanation for the delay is the period between 25th November, 2019 and 6th December, 2019, when the applicant's motion was filed. That delay is not inordinate and as the respondent has not objected to the motion, I will exercise my discretion in the applicant's favour.

[7] Accordingly, I extend time for the applicant to file and serve the record of appeal against the judgment delivered on 4th July, 2019 within 30 days from the date hereof. The applicant shall pay costs of the application to the respondent.

Dated and delivered at Nairobi this 19th day of June, 2020.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR