



**IN THE COURT OF APPEAL**

**AT NAKURU**

**(CORAM: GATEMBU, JA (IN CHAMBERS))**

**NAKURU CIVIL APPLICATION NO. 60 OF 2018**

**BETWEEN**

**CHARLES K. KETER.....APPLICANT**

**AND**

**KIMBILIO DAIMA SACCO SOCIETY.....RESPONDENT**

*(Being an application for extension of time to file record of appeal out of time in an intended appeal from the Judgment and Decree of the Employment & Labour Relations Court at Kericho (Njagi Marete, J.)*

*in*

*Kericho ELRC Cause No. 1 of 2016)*

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**RULING**

1. By application dated 27<sup>th</sup> April 2018 filed in Court on 16<sup>th</sup> May 2018, the applicant, Charles K. Keter has applied under Rule 4 of the Court of Appeal Rules for orders that: leave be granted to extend time to lodge record of appeal out of time; and that

*“the orders issued herein abide by the sister causes namely Kericho Employment and Labour Relations Cause Nos. 2, 3, 4, 5, 6 & 7 of 2016.”* It is not entirely clear from the record what the so called “sister causes” relate to.

2. The applicant’s suit before the Employment and Labour Relations Court (ELRC) at Kericho, being ELRC No. 1 of 2016 against the respondent for wrongful termination of employment was dismissed in a judgment delivered on 15<sup>th</sup> December 2017. Intending to challenge that judgment, the applicant promptly filed a notice of appeal on 21<sup>st</sup> December 2017 and thereafter applied for typed proceedings and the judgment which were supplied on 15<sup>th</sup> March 2018.

3. The present application dated 27<sup>th</sup> April 2018, in which the applicant seeks extension of time to lodge the record of appeal out of time, was not filed until 16<sup>th</sup> May 2018. As stated by Cheruiyot Arap Bii in his replying affidavit in opposition to the application, the period from the time the typed proceedings and judgment were supplied to the time the present application was filed is a period of over two months. No explanation at all is offered for that delay. What Erastus Orina states in his affidavit in support of the application is that upon receiving the typed proceedings and judgment, “we embarked on the exercise of compiling a record of appeal” and that the appellants should be given an opportunity to ventilate his case.

4. In *Fakir Mohamed vs. Joseph Mugambi & 2 others [2005] eKLR Waki, J.A* stated that:

*“The exercise of this Court’s discretion under Rule 4... 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 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 exhaustive factors: See Mutiso vs. Mwangi Civil Appl. NAI. 255 of 1997 (UR), Mwangi vs. Kenya Airways Ltd [2003] KLR 486, Major Joseph Mwereri Igweta vs. Murika M’Ethare & Attorney General Civil Appl. NAI. 8/2000 (UR) and Murai v Wainaina (No 4) [1982] KLR 38.”*

5. The Supreme Court of Kenya in in Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014[2014] eKLR stated that that a party seeking extension of time has the burden to lay a basis to the satisfaction of the court why the court's discretion should be exercise in his favour and delay should be explained to the satisfaction of the court.

6. Absent any explanation for the delay of over two months in taking any action after the typed proceedings and judgment had been made available, I am not persuaded that this is a proper case for the court to exercise its discretion in favour of the applicant. Consequently, I decline to grant the prayers sought in the application dated 27<sup>th</sup> May 2018 and filed in court on 16<sup>th</sup> May 2018. It is accordingly dismissed with no orders as to costs.

Orders accordingly.

*Dated and delivered at Nairobi this 10<sup>th</sup> day of July, 2020.*

**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**