



IN THE COURT OF APPEAL

AT NAKURU

(CORAM: GATEMBU, JA (IN CHAMBERS))

NAKURU CIVIL APPLICATION NO. 11 OF 2019

BETWEEN

JANE NJOKI GICHURU.....APPLICANT

AND

THE HON. ATTORNEY GENERAL.....RESPONDENT

(Being an application to file an appeal out of time against the Judgment and

Decree of the High Court of Kenya at Nakuru (J. Mulwa, J.)

delivered on 20th April 2017

in

Nakuru HCC No. 94 of 2010)

RULING

1. Before me is the applicant's application dated 5th February 2019 made under Rule 4 of the Court of Appeal Rules. The applicant seeks leave to file a record of appeal out of time.

2. On 20th April 2017, the High Court at Nakuru (*J. Mulwa, J.*) dismissed the applicant's suit, being High Court Civil Case No. 94 of 2010, in which the applicant had sought damages for alleged medical negligence following surgery she had undergone at Rift Valley Provincial General Hospital. Upon delivery of that judgment on 20th April 2017, she filed a notice of appeal on 3rd May 2017, which was within 14 days period prescribed for doing so under Rule 75(2) of the Court of Appeal Rules.

3. Having applied for typed proceedings and judgment for purposes of appeal, the court took long to prepare and make the same available. They were ready on 4th December 2018 and a certificate of delay was issued on 6th December 2018. She then instructed the advocates currently on record to act for her in place of her previous advocates. She says the offices of the advocates presently on record for her remained closed for December 2018 Vacation and the present application was then filed on 6th February 2019 after the previous advocates who acted for the applicant granted consent on 25th January 2019 for the current advocates to take over the conduct of the matter.

4. The application is not opposed. Having regard to the principles governing the exercise of the Court's discretion under Rule 4 of the Court of Appeal Rules (See in *Fakir Mohamed vs. Joseph Mugambi & 2 others [2005] eKLR* as well as the Supreme Court decision in in *Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014[2014] eKLR*), this in my view is a proper matter for the court to exercise its discretion in favour of the applicant. The delay is explained and there is no demonstration by the respondent that any prejudice will be suffered if the application is allowed.

5. I accordingly allow applicant's application dated 5th February 2019. Leave is hereby granted to the applicant to file and serve the memorandum and record of appeal from the judgment of the High Court delivered on 20th April 2017 within 30 days from the date of delivery of this ruling.

6. The costs of the application will abide the outcome of the intended appeal.

Dated and delivered at Nairobi this 10th day of July, 2020.

S. GATEMBU KAIRU, FCIArb

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR