



**IN THE COURT OF APPEAL**

**AT MOMBASA**

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

**CIVIL APPLICATION NO. 4 OF 2020**

**BETWEEN**

**JUMA ABDALLA GAFO.....APPLICANT**

**AND**

**POSTAL CORPORATION OF KENYA.....RESPONDENT**

***(Being an application for enlargement of time to file and serve the record of appeal***

***from the Judgment of the Employment & Labour Relations Court at Mombasa***

***(Rika, J.) delivered on 22<sup>nd</sup> February, 2019 in Mombasa ELRC Cause No. 812 of 2016)***

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**RULING**

1. By his application dated 14<sup>th</sup> January 2020, the applicant, Juma Abdalla Gafo, seeks an extension of time to file and serve his record of appeal from the judgment of the Employment and Labour Relations Court delivered on 22<sup>nd</sup> February 2019. His suit against the respondent for wrongful termination was dismissed by that court on account of being time barred. He states in his affidavit in support of the application that following the delivery of the judgment on 22<sup>nd</sup> February 2019, he applied for typed proceedings and judgment on 1<sup>st</sup> March 2019; filed a notice of appeal on 4<sup>th</sup> March 2019; and received the typed proceedings and the judgment on 31<sup>st</sup> May 2019 but was unable to file the record of appeal on account of the hefty court fees demanded for filing.

2. Beyond stating that he was not in gainful employment and was not in a position to raise the required court fees, he does not demonstrate what his means are. Neither did he apply for waiver of the fees in accordance with the rules. He does not explain why, having obtained the proceedings and the judgment in May 2019, he had to wait until January 2020 to file the present application.

3. Although the Court has unfettered discretion under Rule 4 of the Court of Appeal Rules to extend time, that discretion must be exercised judicially. In ***Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014[2014] eKLR*** the Supreme Court of Kenya stated 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.

4. Similarly, 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. Applying those principles to the present case I am not satisfied that the applicant has placed material before the Court on the basis of which I am able to exercise the court's discretion in his favour.

6. I accordingly decline the application and the same is dismissed with no orders as to costs.

*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**