



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OKWENGU, JA (IN CHAMBERS))

CIVIL APPLICATION NO. 221 OF 2019

BETWEEN

FORMAX INSURANCE BROKERS LIMITED.....APPLICANT

AND

GLORY CAR HIRE TOURS & SAFARIS LTD.....RESPONDENT

(An Application for extension of time within which to file and serve a Record of Appeal out of time from the Judgment of the High Court of Kenya at Nairobi (B. Thuranira, J) dated 16th November, 2018

in

H.C.C.A No. 310 OF 2015

RULING

[1] On 16th November, 2018, the High Court sitting as a first appellate court, upheld the judgment of the Resident Magistrate sitting at the Magistrate’s Court at Milimani Commercial Court in which the magistrate had dismissed the applicant’s claim for a sum of Kshs.440,683 being outstanding balance of premiums for insurance policies issued to the respondent.

[2] The applicant who was aggrieved with the judgment of the High Court filed a notice of appeal on 30th November, 2018.

Before this, the applicant had by a letter dated 27th November 2018 which was received in the Civil Registry on 29th November 2018 applied for certified copies of the proceedings and judgment. By a certificate of delay, dated 10th June, 2019 the Deputy Registrar of the High Court has certified that the applicant applied for proceedings on 27th November, 2018 and that the typed proceedings were ready for collection on 10th May, 2019 and the certificate of delay prepared on 10th June 2019.

[3] The applicant who filed the current application on 15th July, 2019 seeking extension of time, pleads that the delay in filing the appeal has not been inordinate nor has it been indolent. The applicant contends that it has an arguable appeal and that the respondent will not be prejudiced by the orders sought.

[4] The respondent has not filed any response to the application nor any submissions, despite a notice having been given by the court that due to the Covid-19 pandemic, the matter would proceed through written submissions without the presence of the parties.

[5] This Court has discretion under Rule 4 of the Court Rules to extend time for the filing of the appeal. However, the applicant has to satisfy the Court that there is sufficient justification for the Court to exercise its discretion in its favour. In **Mutiso vs Mwangi**, (1999) 2 EA 231, the Court highlighted the circumstances under which time may be extended as follows;

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay: secondly, the reason for the delay: thirdly (possibly), the chances of the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted”.

[6] The applicant has demonstrated that it was not indolent in pursuing its right of appeal. The judgement intended to be appealed against

was delivered on 16th November, 2018 and the notice of appeal was filed on 30th November, 2018 which was in time. The typed proceedings were applied for on 27th November, 2018, and the applicant has demonstrated that it followed up the processing of the proceedings by writing reminders. Although the certificate of delay states that the period between 27th November and 10th May 2019 was the period required for preparation and supply of the court proceedings and judgment, it is evident that the certificate was issued on 10th June, 2019 and the applicant could not make his application without that certificate. What this means is that the period which should be excluded is actually from 27th November to 10th June 2019. The applicant's motion was filed on 15th July, 2019. This is 35 days from the date the certificate of delay was ready. Under rule 82(1) of the Court Rules, the applicant had 60 days to file the record of appeal, from the date of filing the notice of appeal, that is, 30th November 2018. However, the proviso to Rule 82(1) provides that the period certified as necessary for the preparation and delivery of the certified copies of the proceedings shall be excluded from the computation of the period for filing the appeal, if the request for the proceedings was made within 30 days from the date of the judgment sought to be appealed against. This means that the period from 30th November 2018 to 10th June 2019 should be excluded in computing time for the filing of the record of appeal. and this leaves only the 35 days.

[7] In the circumstances, I am satisfied that the applicant has given an adequate explanation that not only shows that there is no inordinate delay but also that the applicant is not to blame and is deserving of the exercise of this Court's discretion. The applicant will not suffer any prejudice; indeed, it has not filed any objection to the applicant's motion.

[8] For the aforesaid reasons I allow the applicant's motion and order that the record of appeal be filed within 30 days from the date hereof. The application not having been opposed each party shall bear their own costs.

Dated and delivered at Nairobi this 7th day of August, 2020.

HANNAH OKWENGU

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR