



IN THE COURT OF APPEAL

AT NAIROBI

[CORAM: SICHALE, JA IN CHAMBERS]

CIVIL APPLICATION NO. 229 OF 2019

BETWEEN

GETRIO INSURANCE BROKERS LTD.....APPLICANT

AND

MWALIMU NATIONAL CO-OPERATIVE

SACCO LTD.....1ST RESPONDENT

CIC INSURANCE GROUP LIMITED.....2ND RESPONDENT

(Being an application for leave to file appeal out of time against the judgment of

the High Court of Kenya at Nairobi (15th May, 2019) in HCCC NO. 38 OF 2012

RULING

The applicant, **Getrio Insurance Brokers** filed a Notice of Motion application dated **16th July, 2019** and sought in the main, that it be granted leave to file, out of time its Notice of Appeal against the judgment of **Kasango, J** rendered on **15th May, 2019** in Nairobi HCCCD No. 38 of 2012 wherein the applicant was the plaintiff and Mwalimu National Cooperative Sacco Ltd and CIC Insurance Group Limited, the 1st and 2nd respondents herein were the 1st and 2nd defendants respectively.

The motion is supported by the affidavit of **Charles Kimenyi**, the appellant's Managing Director sworn on **16th July, 2019**. He deponed that on the date judgment was delivered, (**15th May, 2019**), the appellant was absent; that initially, the judgment was to be delivered on **4th April, 2019**. However, on that date, the judge was indisposed and the judgment was to be delivered on notice; that no notice was received by their advocate informing them of the new judgment date, and that later, upon inquiry, its counsel got to know of the delivery of the judgment.

The motion was opposed by both the 1st and 2nd respondents. In an affidavit sworn on **30th June, 2020** by **Brenda Kiberenge**, the 1st respondent's Company Secretary, she deponed that parties were served with a Notice of judgment for **15th May, 2019** and that besides, the matter appeared on that day's cause list for delivery of judgments.

Mary Wanja, the Company Secretary of the 2nd respondent echoed the 1st respondent's depositions to the effect that parties were served with a Notice of Judgment besides the matter being cause-listed for delivery of judgment on **15th May, 2019**.

I have considered the application, the grounds in support thereof, the replying affidavit filed by the two respondents, the 2nd respondent's submissions and the law, in absence of counsel given the prevailing circumstances caused by the Covid 19 pandemic.

Rule 4 of this Court's Rules provides:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended”.

Be that as it may, the said Rule does not provide for factors a court ought to consider in an application for enlargement of time. Suffice to state that this Court has devised appropriate principles to be applied in achieving a “just” decision. In **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR**, this Court stated:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

It is not in dispute that the intended impugned judgment was delivered in the absence of the applicant’s counsel. The respondents insist that a notice of judgment was served upon the parties and that the matter was cause-listed for delivery of judgment on **15th May, 2019**.

In my view, these are general statements. There is no proof that the appellant was in receipt of the judgment notice.

It is also not enough to state that a litigant ought to know from the cause list the date of delivery of its judgment.

Given the above, I am inclined, which I hereby do, to allow the motion by granting leave to the applicant to file its Notice of Appeal against the judgment of **Kazango, J** delivered on **15th May, 2019**. The said notice should be filed and served within seven (7) days of today’s date. Each party shall bear its /his/her

own costs.

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

F. SICHALE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR