



**IN THE COURT OF APPEAL**

**AT NYERI**

**(CORAM: MUSINGA, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. 105 OF 2018**

**BETWEEN**

**KENYA COUNTY GOVERNMENT WORKERS UNION.....APPLICANT**

**AND**

**GITHUNGURI WATER & SANITATION COMPANY LIMITED.....RESPONDENT**

*(Being an application for extension of time to lodge a notice of appeal out of time and file*

*and serve the record of appeal out of time in an intended appeal from a judgment of the*

*Employment and Labour Relations Court of Kenya at Nyeri (Makau, J.) dated 4th June 2018*

**in**

**H.C.C.C. No. 170 of 2017)**

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**RULING**

1. The applicant herein seeks extension of time to file a notice of appeal out of time against the judgment of the **Employment and Labour Relations Court (ELRC)** dated 4th June,2018. The applicant also seeks leave to file and serve the record of appeal out of time.
2. The application for extension of time is supported by an affidavit sworn by one **Raphael Angore**, the applicant's **Deputy General Secretary**, allegedly before one **Viola Atieno Odhiambo**, Advocate and Commissioner of Oaths, who apparently swore an affidavit denying having ever commissioned the said affidavit; and that her purported signature therein is a forgery.
3. Mr. Angore stated in his affidavit that the ELRC (Makau, J.) delivered the impugned judgment on 4th June 2018 without any notice to the applicant and therefore the applicant did not know about the judgment until sometime after expiry of the statutory period for filing an appeal; that the delay in filing the appeal was not caused by temporary vacancy in the office of the Secretary General and his deputy, who are the only main officials authorized to approve and execute court documents on behalf of the applicant.
4. In the matter that was before the trial court, the applicant wanted the court to order reinstatement of some grievants to the respondent's employment, following the decision of the county labour officer that recommended their reinstatement but the respondent did not reinstate them. The trial court held that due to the bad blood between the respondent and the grievants it was not appropriate to order their reinstatement and so ordered they be compensated by payment of salary for 6 months.
5. The applicant believes that the intended appeal has high chances of success and cited its draft memorandum of appeal that it annexed to its affidavit.
6. The respondent has opposed the application. It argues that there is no valid affidavit in support of the application; that the delay from 11th June 2018 when the applicant became aware of the judgment to 20th August 2018 when it filed the application has not been explained sufficiently; that a notice of appeal does not require the signature of the applicant's Secretary General or his assistant and therefore the argument that the said offices were vacant is not a sufficient reason; that the intended appeal has no chances of success; and that the respondent will be prejudiced if the application is allowed.

7. The principles that guide this Court in an application for extension of time under **rule 4 of this Court's Rules** are well settled. The court considers the period of delay; the reason for the delay; (possibly) the chances of success of the intended appeal; and the degree of prejudice that may be occasioned to the respondent if the application is granted.

8. The impugned judgment was delivered on 4th June 2018 and the applicant knew about it on 11th June 2018 but did nothing in the remaining seven (7) days before expiry of the fourteen (14) days specified under **rule 75 (2)**. Thereafter the applicant did nothing until 20th August 2018, a delay of 63 days. That delay has not been sufficiently explained.

9. This Court has severally stated that every delay, even of one day, must be explained. The Supreme Court in **COUNTY EXECUTIVE OF KISUMU v COUNTY GOVERNMENT OF KISUMU & 8 OTHERS, Civil Application No. 3 of 2016** held:

***“[23] It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the court.”***

10. Whether there were vacancies in the applicant's offices of Secretary General and his assistant is not sufficient explanation for the delay because a notice of appeal need not be signed by any of the officials, the applicant's advocates could have signed. In my view, therefore, the delay was fairly long, but most importantly has not been explained.

11. Turning to the chances of success of the intended appeal, the applicant intends to urge the appellate court to reinstate the grievants to their employment. Taking into consideration the factors that guide the court in ordering reinstatement as stipulated under **Sections 12(3) and 49 (4) of the Employment Act**, I think the intended appeal has minimal chances of success.

12. All in all, I find this application wanting in merit and dismiss it with costs to the respondent.

**Dated and delivered at Nairobi this 7<sup>th</sup> day of August, 2020.**

**D.K. MUSINGA**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**