



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: KANTAL, JA (IN CHAMBERS))**

**CIVIL APPEAL (APPLICATION) NO. 5 OF 2019**

**BETWEEN**

**OTIENO RAGOT & COMPANY ADVOCATES .....APPLICANT**

**AND**

**CHEMELIL SUGAR COMPANY LIMITED.....RESPONDENT**

*(An application for extension of time to file a notice of appeal against the Ruling*

*of the High Court of Kenya at Kisumu (Cherere, J.) delivered on 9th October, 2019*

**in**

**HC. Misc. Case No. 98 of 2019)**

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**RULING**

I have seen a letter (email) dated 30th June, 2020 sent at 3.22 p.m. by the law firm of **Owiti, Otiemo & Ragot Advocates** to the Deputy Registrar of this Court stating that the said advocates request an adjournment of the hearing of the Motion scheduled today on grounds that the applicant would like to amend the Motion to include an additional prayer.

I note that the application was filed on 14th January, 2020 and the request for adjournment is made rather late, the day before the hearing and I am unable to see any good reason for the Motion to be adjourned. This Court has a policy of zero-tolerance on the issue of adjournments of appeals or applications save in deserving cases where there is a good reason to allow an adjournment. I will not adjourn the Motion.

In the Motion dated 17th December, 2019 brought under **rule 4** of the **rules of this Court** amongst other rules it is prayed that time be extended to allow the applicant to file a notice of appeal out of time and the notice dated 21st November, 2019 be deemed as properly filed. In grounds in support of the Motion and in an affidavit of a lawyer, **Miriam Onsongo** sworn in Kisumu it is said that the applicant filed **Miscellaneous Cause No. 98 of 2019** seeking adoption of a Certificate of Costs dated 24th July, 2019 as a Judgment of the court; that there was a prayer that interest on costs accrue at a certain rate from a given date; that the applicant was dissatisfied with a ruling made and filed a notice of appeal dated 20th November, 2019 but that the notice was filed late because it should have been filed on 23rd October, 2019. It is said that the delay is neither deliberate nor intended to obstruct the course of justice – that the applicant did not know on the day of delivery of ruling that award of interest had been declined.

**Collins Ochieng Agai**, a resident of Chemelil in Kisumu County is the **Legal Services Manager** of the respondent, **Chemelil Sugar Company Limited**, and opposes the Motion. He deposes in a replying affidavit sworn on 4th March, 2020 that there was no contractual agreement between the applicant and the respondent on the issue of accrual of interest; that the applicant, a law firm, was present in court when ruling was delivered; that there is no good reason given for notice of appeal not being filed on time.

The case of **Leo Sila Mutiso v Rose Wangari Mwangi [1999] 2 EA 233** has been cited often as it laid principles to consider in an application for leave to extend time such as the application before me today. It was said:

***“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".***

I am therefore to consider whether there is inordinate delay in taking a necessary step to appeal; why the delay; is the intended appeal capable of succeeding and would the respondent be prejudiced if I allow the Motion.

I have looked at all the documents before me.

The applicant requested the Judge to adopt a Certificate of Costs as a Judgment of the court. The Judge agreed and adopted the Certificate as a Judgment of the Court. The applicant was present in Court and was represented by a lawyer, **Miss Olonyi** who held brief for **Miss Osongo**, when ruling was delivered on 9th October, 2019. I have not been told why, in those premises, the applicant being dissatisfied with the ruling delivered on that day did not file a notice of appeal within the timelines set out in the rules of this Court.

I have also perused draft Memorandum of Appeal and I am not satisfied that the intended appeal has chances of success. The issue before the Judge was adoption of a certificate of costs as a Judgment of the court. The issue of whether to give interest or the quantum thereof is a matter at the discretion of the Judge under the Civil Procedure Rules. I don't see any chance of an appeal succeeding.

The respondent states through the replying affidavit of its Legal Services Manager that it would be inconvenienced if I allow the application.

The application lacks merit and I dismiss it with costs to the respondent.

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

**S. ole KANTAI**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**