



IN THE COURT OF APPEAL

AT NAKURU

(CORAM: KANTAL, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. 43 OF 2019

BETWEEN

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....APPLICANT

AND

STEPHEN KIBET NGENO.....RESPONDENT

(Being an application for extension of time to file notice of appeal from the Judgment of the

Employment and Labour Relations Court of Kenya at Kericho (Njagi Marete, J.)

dated 1st February, 2019 in Cause No. 35 OF 2018)

RULING

In the Motion said to be brought under **Section 3A** of the **Appellate Jurisdiction Act** and **rules 4, 75(2) and 47(1) and (2)** of the **rules of this Court** I am asked to extend time for filing Notice of Appeal from the decision of **Njagi Marete, J.**, of the Employment and Labour Relations Court, Kericho, given on 1st February, 2019. In grounds in support of the Motion and in an affidavit of **Chrispine Owiye**, the **acting Director Legal and Public Affairs Officer** of the applicant, it is said that the applicant is dissatisfied with that Judgment and intends to appeal; that the applicant failed to file Notice of Appeal within the time required by the rules of this Court; that Notice of Judgment of that court was served on 1st February, 2019, the very day judgment was delivered; that the applicant's law firm is based in Nairobi and the lawyers could not attend court in Kericho; that Judgment was not availed to the lawyers until 1st March, 2019 when they got to know the content of the same. It is also said that the intended appeal is arguable and of great public interest and importance as it touches on stay orders given in **Court of Appeal Civil Application No. 62 of 2017** in the case of **County Government of Embu & Others v IEBC & Others** which stayed orders which have been granted in the Judgment of Njagi Marete, J.

I have noted the written submissions filed by the applicant.

The principles which apply in applications of this nature are well known and were well summarized in the oft-cited case of **Leo Sila Mutiso v Rose Wangari Mwangi [1999] 2 EA 233** 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”.

I note that Judgment of the lower court was delivered on 1st February, 2019. The applicant says that its lawyers who are based in Nairobi were served with a notice of delivery of Judgment on the very day the Judgment was delivered in the far away town of Kericho. The applicant's lawyers applied for a copy of the Judgment and they say that this was not supplied until 1st March, 2019, way past the time a notice of appeal should have been filed. I note that the Motion is dated 2nd August, 2019, a period which I do not consider inordinate in the circumstances.

The matter in the Employment and Labour Relations Court involved issues of reinstatement, withheld salary, notice pay and damages. The Judge ordered that the respondent, **Stephen Kibet Ngeno**, be reinstated to employment and be paid damages. I think that the applicant

should have an opportunity to appeal.

I am satisfied that the applicant is entitled to a grant of orders extending time to file an appeal. The Motion succeeds. Let the applicant file a notice of appeal within 14 days of today and serve it accordingly and thereafter file record of appeal within 30 days of service of notice of appeal. Costs of the Motion will be in the intended appeal.

Dated and delivered at Nairobi this 23rd day of October, 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