



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KIAGE, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAL 313 OF 2018

IN THE MATTER OF AN INTENDED APPEAL

BETWEEN

SUSAN MUKONYO KAMUL.....APPLICANT

AND

JENNIFER WAIRIMU NJOGU.....RESPONDENT

(An application for extension of time within which to file and serve Notice of

Appeal and Record of Appeal against the order of the High Court of Kenya

at Machakos (Nyamweya, J.) dated 16th October, 2017

in

Succ. Cause No. 458 of 2017)

RULING

By the motion dated 31st October, 2018, the applicant seeks an order for extension of time for filing the notice of appeal from the order of the High Court (Nyamweya, J.) made on 16th October, 2017. She also prays that the notice of appeal filed out of time on 14th December, 2017 be deemed to have been filed in time. The grounds she advances for the delay are that her former advocates, Ms. Mwangangi & Associates failed her by filing the notice of appeal late. She did not know of that error until much later on 19th October, 2018 whereupon she speedily filed this motion.

The motion was served on the respondent who neither filed a replying affidavit nor appeared at the hearing despite service on her of the notice of hearing.

Having considered this motion and heard **Mr. Wafula**, learned counsel for the applicant in the absence of my opposition, I am inclined to believe the applicant that she has all along been desirous of filing an appeal and she did instruct her former advocates to do so on her behalf, but they filed the notice of appeal late. She moved with alacrity upon learning of that delay and, all things considered, including that she was at the time acting in person, the application she filed is deserving of my favourable discretion.

It is accordingly granted. Time is extended and the motion of appeal filed on 14th December, 2017 is deemed as filed in time.

To obviate further delays, the applicant is directed to file the record of appeal within **30 days** of the date hereof.

Costs shall be in the intended appeal.

Made at Nairobi this 26th day of February, 2019.

P. O. KIAGE

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JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR