



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: KIAGE, JA.(IN CHAMBERS))

CIVIL APPLICATION NO. 43 OF 2019

BETWEEN

WAHIB SAAD ALIAPPLICANT

AND

SALMA KASSIM SAIDRESPONDENT

(Appeal for leave to appeal out of time against the judgment of the High Court of Kenya at Kisumu (Cherere, J.) dated 18th October, 2018 in

ORIGINAL SUCC APPEAL NO. 32 of 2011)

RULING

The judgment of the High Court that the applicant seeks extension of time to file a notice of appeal against was delivered on 18th October, 2018.

As at the time this motion was filed, six months later on 26th April, 2019, no notice of appeal had been filed. None has been filed to date. In the supporting affidavit the applicant states at paragraph 5 that;

“the delay to issue instructions for filing of notice of appeal was occasioned by excusable inadvertence and not by desire to scuttle, delay or stifle administration of justice.

The respondent contends that no reason has been given for the delay. I am afraid I have to agree. The applicant does not say what the inadvertence that is sought to be excused was.

I think that 6 months is a woefully long time for a party to let slip by before deciding whether or not he wants to appeal. Much as my discretion is wide and unfettered, I must have some basis on which I can do so on behalf of a pleader. When no reason at all is given and I say this cognisant that the motion on its face mentions breakdown communication between the applicant and his former advocates, “leading to this failure to timorously (sic) given instructions for lodgement of a notice of appeal in time,” - it would be neither judicial nor judicious to extend time. To do so would be to act out of whim, caprice or sympathy as opposed to principle.

In the result, I am more persuaded by the arguments by learned counsel Mr. Nyanga for the respondent, that litigation must come to an end. I cannot revive this litigation after learned counsel Mr. Achura’s client went to sleep for half a year.

The application is dismissed with costs.

DATED at Kisumu this 21st day of May, 2019

P. O. KIAGE

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR.