



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: W. OUKO, (P) IN CHAMBERS)

CIVIL APPLICATION NO. 150 OF 2018

BETWEEN

PAUL NJOROGI KAMAU..... APPLICANT

AND

MULTIPLE HAULIERS E.A LIMITED.....RESPONDENT

*(Being an application for extension of time to file the intended appeal out of time from the Judgment of the High Court at Nairobi (M. Mbaru, J.) dated 29th June, 2017*

in

Cause No. 1138 of 2013)

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RULING

This application by motion on notice dated 17th April 2018 is premised on **Sections 3A** and **3B** of the Appellate Jurisdiction Act and **Rules 4** and **42** of this Court's Rules, for an order that the time for filing a notice of appeal against the judgment of the High Court made on 29th June 2017 (Mbaru, J) be extended.

The only explanation proffered for not lodging appeal within the time allowed by the rules is that counsel representing the applicant did not have instructions from the applicant after the latter relocated to the village after his services were terminated by the respondent.

Consequently, by the time instructions were obtained the time for filing the notice of appeal had lapsed; and that it was not until six months later that the applicant visited the advocate's chambers.

The respondent for its part has insisted that, since extension of time is a discretionary power, it was incumbent on the applicant to satisfy the Court that he was prevented by sufficient reasons from filing the appeal in time. The respondent has also argued that the appeal has no chances of success since Kshs. 60,000 awarded to the applicant was reasonable.

I am guided by the following oft-quoted passage from the case of **Leo Sila Mutiso V. Rose Hellen Wangari Mwangi** Civil Appeal No. 255 of 1997, on the exercise of discretionary powers when considering an application for enlargement of time:

**“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.”**

To begin with the decision sought to be impugned was made on 29th June 2017. This application was brought on 17th May 2018, approximately 11 Months. The explanation that counsel had no instructions from the applicant is absurd since he was represented by an advocates who owed him a duty to inform him of the court processes and procedures.

Even after visiting his advocates' chambers in December 2017 after the delivery of the judgment and giving instructions, the applicant still

took five more months to present this application.

On the chances of success, and without expressing any conclusive position, I think an award of Kshs.60,000/= in the circumstances was adequate.

Accordingly the applicant has not satisfied the criteria for the grant of leave to extend time. The application is dismissed with no orders as to costs.

**Dated and delivered at Nairobi this 5<sup>th</sup> day of July 2019.**

**W. OUKO, (P)**

.....

**JUDGE OF APPEAL**

*I certify that this is a*

*True copy of the original*

**DEPUTY REGISTRAR**