



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: SICHALE, JA (IN CHAMBERS)

CIVIL APPLICATION NO. 58 OF 2019 (UR NO. 64 2019)

BETWEEN

LUCAS KITAVI KING’OO.....APPLICANT

AND

MASAKU TEACHERS’ SAVINGS & CREDIT

CO-OPERATIVE SOCIETY LTD.....RESPONDENT

(Being an application for extension of time to lodge a Notice of Appeal out of time from the Judgment and decree of the Employment and Labour Relations Court of Kenya at Nairobi (Wasilwa, J) dated 5th February, 2019

IN

E&LRC CAUSE NO. 1635 OF 2013

RULING

The applicant, **LUCAS KITAVI KING’OO** filed a notice of motion application dated 22nd **May, 2019**. The applicant sought the following orders:

“that the Honourable Court be pleased to extend the time for the lodging of the notice of appeal from the decision of the Superior Court dated 5th February, 2019 made in Nairobi Employment & Labour Relations Court Suit No. 1635 of 2013 – Lucas Kitavi King’oo vs. Masaku Teachers’ Savings & Credit Co-operative Society Ltd by the Hon. Justice Wasilwa, Judge; that the Notice of Appeal filed on 20th February, 2019 by the applicant in the Superior Court, one day after the period for filing the same had lapsed, be deemed as duly filed; that the costs of this application to abide the outcome of the appeal”

The application was premised on the affidavit of **Florence M. Mwangangi**, an Advocate of the High Court of Kenya on behalf of her client, the applicant.

In brief, the applicant contends that he was aggrieved by the decision of the Superior Court delivered on 5th **February, 2019**, that on 20th **February, 2019**, a Notice of Appeal was filed, which was one (1) day late as the rules required that the Notice of Appeal be filed within fourteen (14) days which elapsed on 19th **February, 2019**.

On 22nd **July, 2019**, the motion came up for hearing before me. There was no representation from the firm of Liko & Anam Advocates for the respondents in spite of service of a hearing notice upon the said firm on 15th **July, 2019**.

In urging the motion, learned counsel Mr. Munyao holding brief for Mrs. Mwangangi submitted that through inadvertence, the filing of the Notice of Appeal was delayed by one day. He urged me to allow the motion and order that the Notice of Appeal be deemed as having been duly filed.

I have considered the motion, the supporting affidavits and the law. It is regretted that counsel who appeared before me cited no authorities to aid the court in arriving at a judicious decision.

Be that as it may, the application is premised under Rule 4 of this Court's Rules. Rule 4 provides as follows:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended”.

In exercising my discretion, I take note that the delay was for one (1) day only. I also take note that the motion was not opposed by the respondent.

I allow the motion. The Notice of Appeal filed on **20th February, 2019** is hereby deemed as duly filed.

In view of the non-attendance of the respondent, in spite of service,

I make no order as to costs.

Dated and delivered at Nairobi this 11th day of October, 2019.

F. SICHALE

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR