



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: M'INOTI, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. 307 OF 2017 (UR 245/2017)

BETWEEN

GOLICHA GANGE OMAR.....APPLICANT

AND

ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT

PRINCIPAL SECRETARY

MINISTRY OF STATE FOR DEFENCE.....2<sup>ND</sup> RESPONDENT

THE CHAIRMAN, TENDER COMMITTEE

MINISTRY OF STATE FOR DEFENCE.....3<sup>RD</sup> RESPONDENT

ABDI OMAR ADAN & ADAN OSMAN GODANA T/A

ELDORET STANDARD BUTCHERY.....4<sup>TH</sup> RESPONDENT

*(An application for extension of time to file and serve a notice of appeal*

*out of time from the judgment and decree of the High Court (Korir, J.)*

*dated 5<sup>th</sup> December 2013 in JR CASE No. 384 of 2012)*

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RULING

The **applicant, Golichah Gange Omar**, who appeared before me in person, seeks leave of this Court to file an intended appeal against the judgment of the High Court (**Korir, J.**) dated 5<sup>th</sup> December 2013, out of time. By that judgment the High Court dismissed his judicial review application seeking an order of *prohibition* to stop the respondents from awarding to any other person other than himself, the tender to supply beef to units of the 2<sup>nd</sup> respondent, and an order of *mandamus* to compel the respondents to award the tender to him. Aggrieved by that judgment, he filed a Notice of Appeal on 10<sup>th</sup> December 2013, well within the 14 days prescribed by **rule 75(2)** of the **Court of Appeal Rules**. On the same day he applied in writing for certified copies of the proceedings and judgment, which was also within the time prescribed by the proviso to **rule 82** of the rules of this Court. He deposes in paragraph 6 his affidavit in support of the application for extension of time that he wrote numerous letters to the Registrar and made many trips from Eldoret where he lives to Nairobi in pursuit of the proceedings, but they were not availed to him until 29<sup>th</sup> August 2017. He has annexed to his affidavit one of the letters he wrote to the registrar, dated 10<sup>th</sup> April 2014. There is also a certificate of delay confirming that the certified copies of the proceedings and judgment were ready for collection on 29<sup>th</sup> August 2017.

Pursuant to the proviso to rule 82 of the rules of this Court, the applicant had 60 days from the date of collection of the proceedings to file his intended appeal. He did not do so and on 22<sup>nd</sup> December 2017 he applied for extension of time to file the appeal out of time. He blames the delay to the fact that the court took a long time to avail the proceedings; he has been acting in person, and lives in Eldoret.

Although duly served, the respondents neither filed replying affidavits nor appeared for the hearing of this application. Accordingly I will take the averments by the applicant as uncontroverted and unchallenged.

Under **rule 4** of the Court of Appeal Rules on which the applicant has based his application, the discretion to extend time is wide and unfettered, though it must be exercised judiciously. Among the considerations I am required to bear in mind are the period of delay, the reason for the delay, the degree of prejudice the respondent stand to suffer, the resources at the disposal of the parties and the public interest aspects of the intended appeal.

(See ***Fakir Mohamed v. Joseph Mugambi & 2 Others, CA No. Nai. 332 of 2004***).

Having seen and heard the applicant as he prosecuted his application in person, he struck me as forthright and candid. I accept his explanation for the delay. I also do not find, in the circumstances of this case, the delay involved of about two months, inordinate. In excusing the applicant's lapses, I will not shut my eyes to the fact he is and elderly man who has been acting in person. I do not see any prejudice that the respondents will suffer by granting this application; at least they were afforded an opportunity to demonstrate the prejudice, if any, but chose not to appear.

**Section 3A and 3B** of the **Appellate Jurisdiction Act**, fairly recent additions to the statute, introduced the overriding objective that obliges the Court in the exercise of its powers to strive to attain, among others, timely, just, proportionate and affordable determination of proceedings. (See. ***Simba Colt Motors Ltd v James Gitahi Mwangi, C. App. No. Nai. 111 of 2010***).

Those considerations also support a case for giving the applicant an opportunity to agitate his intended appeal on merits before this Court.

Taking all the foregoing into account, I am persuaded that this is a deserving case for extension of time. Accordingly I allow the application and direct the applicant to file and serve his intended appeal within **25 days** from the date of this ruling. Costs shall be in the intended appeal.

**Dated and delivered at Nairobi this 16<sup>th</sup> day of February, 2018**

**K. M'INOTI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**