



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GITHINJI, JA (IN CHAMBERS) CIVIL APPLICATION NO. NAI 183 OF 2017

BETWEEN

ISAAC WILLIAT MANGONGO.....APPLICANT

VERSUS

THE REGISTRAR OF TRADE UNIONS.....1ST RESPONDENT

KENYA GUARDS & ALLIED WORKERS UNION.....2ND RESPONDENT

AND

KENYA NATIONAL PRIVATE

SECURITY WORKERS UNION.....1ST INTERESTED PARTY

SAMSON WANJALA MATETE.....2ND INTERESTED PARTY

(Being an application for leave to appeal out of time from the Employment and Labour Relations Court of Kenya at Nairobi (**Nduma Nderi, J.**), dated 25th April, 2014 in ELRC Judicial Review No. 4 of 2013)

RULING

1. This is an application under **Rule 4** of the Court of Appeal Rules for extension of time to file a record of appeal. The applicant intends to appeal against the ruling of the Employment and Labour Relations Court (**Nduma, J.**) dated 25th April, 2014.
2. The court has unfettered discretion under rule 4 aforesaid to extend time on terms that it thinks just whether before or after the doing of an act. That discretion is exercised judicially guided by the principles enunciated by this Court in many decisions including in **Wasike v. Swala (1984) KLR 591**. The court is required to consider *inter alia* whether the intended appeal has merit, whether delay in filing the application is inordinate and whether the extension of time will occasion undue prejudice to a respondent.
3. The application is supported by the grounds on the body of the application and in the affidavit of **Isaac Williat Machongo**, the applicant herein. The respondents and the two interested parties did not file replying affidavit. The 1st respondent did not attend the hearing although served with a hearing notice. **Mr. Oduor** and **Mr. Wati**, learned counsel for 2nd respondent and 1st interested party respectively attended the hearing of the application. Mr. Oduor supported the application while Mr. Wati opposed the application.
4. The applicant states in the supporting affidavit, amongst other things, that, the notice of appeal was filed on 7th May, 2011; that several letters were written to the Deputy Registrar requesting for typed copy of the proceedings and numerous inquiries done; that the proceedings were not supplied; that he complained to the Chief Registrar; that the copies of proceedings were paid for and collected on 27th April, 2017; that a certificate of delay was issued on 12th May, 2017; that he embarked on searching for an advocate and finally got one on 20th July, 2017 and that the delay of 15 days is not inordinate. He has annexed various correspondences to the supporting affidavit.
5. **Mr. Owuor**, learned counsel for the applicant recited the facts stated in the supporting affidavit. Mr. Oduor referred to the principles for enlarging time and cited authorities. He submitted, amongst other things, that, the applicant is a layman, that proceedings are an essential part of the record and urged the court to allow the application in the interest of justice. On his part, Mr. Wati referred to paragraph 2 of the

certificate of delay which states:-

“That by a letter dated 6/7/2015, the Deputy Registrar of the Employment and Labour Relations Court informed the firm of Malonzo & Co. Advocates that the copies requested for were ready for collection upon payment of court fees.”

Further Mr. Wati submitted that the court should consider the conduct of the applicant including the fact that the Judge declared the applicant a vexatious litigant.

6. As regards the merits of the intended appeal, the applicant states that the appeal has high chances of success. However, the applicant did not disclose the grounds of the intended appeal or file draft memorandum of appeal.

The ruling of Nduma, J. which the applicant intends to appeal against has been annexed. It shows that:-

i. The application brought before the court asked the court –

“to settle the terms of its orders (Hon. Lady Justice R. Nambuye, given on 21st April, 2011.”

ii. That the nub of the matter was to give clarity to the ruling of Hon. R.N. Nambuye, J (as she then was) in judicial review application No. 369 of 2010 delivered on 21st April, 2011.

iii. That Nambuye, J. had given a ruling on 18th September, 2007 in HCCC No. 210 of 2007 on the dispute.

iv. That Nambuye, J. was called upon to interpret the same ruling and gave an interpretation ruling on 24th October, 2010.

v. That Nambuye, J. had interpreted the effect of the ruling on 28th September, 2008 thus:

“the effect of this court’s ruling of 18/9/2009, and as reiterated by the ruling of 24/9/2010 is that the parties were taken to their position as at 26/7/2007, when the same changed from Kenya Guards and Allied Workers Union to Kenya National Private Security Workers Union which change took place outside the proceedings in HCCC 210/2007.”

vi. That Nambuye, J. had ruled that parties have abused the court process under the guise of pursuing legal rights and that any party that would purport to litigate on issues arising from the proceeding emanating in HCCC No. 210/2007 after 24th March, 2007 would be treating the court with contempt.

7. Ultimately Nduma, J. made a finding that the ruling of Nambuye, J. does not at all lack clarity and that the application was a vexatious litigation.

8. That is the finding that the applicant intends to appeal against. The complaint of the applicant is that the Registrar of Trade Unions has failed to restore the Kenya Guards and Allied Workers Union on the register.

9. In the light of the foregoing and as Nambuye, J. judicially interpreted her own decisions in several rulings regarding the status of the two unions, I am not satisfied that the intended appeal is arguable.

10. As regards the issue of delay, the certificate of delay relied on by the applicant shows that the applicant’s advocates were informed by a letter dated 6th July, 2015 that the copies of the proceedings were ready for collection upon payment of court fees. There is a letter dated 15th October, 2014 contained in the applicant’s bundle of documents filed on 19th October, 2017 showing that by that date, the applicant’s advocates were asking the Registrar of the court to issue a certificate of delay thereby indicating that he had the copies of the proceedings.

In the circumstances, I find that there is unconscionable delay in bringing the application which has not been reasonably explained.

11. For the foregoing reasons, the application is hereby dismissed with costs to the 1st interested party.

Dated and Delivered at Nairobi this 25th day of May, 2018.

E. M. GITHINJI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR