



**IN THE COURT OF APPEAL AT NAIROBI**

**(CORAM: GITHINJI, MUSINGA & KIAGE, J.J.A)**

**CIVIL APPEAL NO. 173 OF 2007**

**BETWEEN**

**CHARTERHOUSE BANK LIMITED.....APPELLANT**

**AND**

**CENTRAL BANK OF KENYA.....1ST RESPONDENT**

**RAVINDRA TAILOR.....2ND RESPONDENT**

**MOHAMED HASHAM ALI MOHAMED.....3RD RESPONDENT**

**(An appeal from the ruling of the High Court of Kenya at Nairobi (Warsame, J.) dated 22nd June, 2007**

**in**

**Misc. Civil Appln. No. 960 of 2007)**

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**JUDGMENT OF THE COURT**

It is odd that this appeal, which is against the order of the High Court (Warsame, J. as he then was) issued on 22nd June 2007 extending the appointment of Rose Detho as the statutory manager of the appellant CharterHouse Bank Limited “for a further period of twelve months” from that date, has been pending before this Court for over a decade. We say odd because the prayers the appellant seeks in the appeal cannot be of use to it that twelve month period having long ago lapsed or expired. Even were we to set aside the extension order and substitute therefor an order dismissing the notice of motion dated 11th June 2007, what would it avail? This is a classic case of an appeal that has been long overtaken by not only events, but also time and utility. It is merely academic and was long ago rendered moot. It is the kind of appeal one would have expected the appellant to withdraw from as far back as 23rd June 2008. But it did not.

As we have indicated, what was before the learned Judge was a notice of motion seeking extension of the statutory manager’s term for 12 months. The grounds on which it was based were just two appearing on its face as;

*“(a) That, the applicant appointed a statutory manager for Charterhouse Bank Limited on 23rd June, 2006 and the period of appointment is due to expire on the 22nd day of June, 2007.*

*(b) That, the statutory manager has been mired up in litigation which has prevented her from discharging her mandate and manacled by court orders from completing the same.”*

It was supported by an affidavit sworn on 11th June 2007 by Rose Detho, the said statutory manager in her capacity as Central Bank’s Assistant Director in the Financial Institutions Supervision Department.

It set out the circumstances leading to the appointment of the manager over the appellant and gave particulars of the various suits filed against her and the Central Bank of Kenya from the very day of appointment. Stay orders were issued by the High Court in stations as diverse as Malindi, Eldoret, Kitale and Milimani Commercial Courts which prevented her from discharging her mandate hence the need for extension of the period of her appointment.

Notwithstanding the limited scope of that application, which was opposed and fully argued before the impugned ruling, the appellant somehow managed to extract an astonishing *fifty-six* grounds of complaint in the memorandum of appeal dated 23rd August 2007. We think,

with respect, that the sheer length of that memorandum of appeal on an issue so simple and straightforward involving the learned Judge's exercise of his unfettered discretion does the appellant no favours. Prolixity, a multiplication of words and a raising of complaints that are quite peripheral to the main, real issue at hand, are not exemplars of effective advocacy, less still strategic litigation.

Since the appellant was challenging the learned Judges' exercise of discretion, it behoved it to persuade us that the extension of the appointment for the twelve months sought was perverse for having proceeded from a misapprehension of the case, a consideration of matters that ought not to have been considered, a failure to consider some germane matter or, looking at the case as a whole, wrong in principle and amounting to misjustice. Only upon a showing of such matters would we interfere with the exercise of a judge's discretion because it is not our place as an appellate court to substitute our discretion for that of the Judge and we are therefore deliberately and circumspectly slow to interfere. As was succinctly stated in the oft-cited *MBOGO vs. SHAH & ANOR* [1968] EA 93;

*“A Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that he misdirected himself in some matter and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge was clearly wrong in the exercise of his discretion and that as a result there has been misjustice.”*

Did the appellant discharge that onus before us? We are afraid not. On the day the appeal was set down for hearing, Ms. M.K. Migiyo, learned counsel, held brief for Mr. O.K. Odera for the appellant. We summarily rejected half-hearted application for an adjournment on account of non filing of submissions. We were not about to countenance the adjournment of so ancient a matter that is no more than an additional to the blot, blight and burden of backlog of appeals.

At this point counsel's sole submission by way of urging the appeal was:

*“We adopt the memorandum of appeal.”*

In opposition to the appeal, Mr. Chacha Odera, learned counsel for the Central Bank of Kenya, the 1st respondent, made no laboured submissions, content to simply state that he was in full support of the decision of the learned Judge.

Mr. Mutiso, learned counsel holding brief for Mr. A.C. Nyairo on record for the 2nd respondent, elected to leave the matter to our decision.

As we have stated, the learned Judge was exercising a discretion donated to the High Court in express, unfettered terms. It proceeds from section 34(3) of the Banking Act, the very one cited by the Central Bank in its notice of motion, as follows;

*“The appointment of a manager shall be for such period, not exceeding twelve months, as the Central Bank shall specify in his instrument of appointment and may be extended by the High Court upon the application of the Central Bank if such extension appears to the court to be justified.”*

(Our emphasis)

The learned Judge had before him an application by the proper party, namely the Central Bank. The extension sought was for 12 months, which was within the period the statute contemplates. There was also laid before the learned Judge grounds, supported by affidavit evidence, justifying the application for extension of time.

Having carefully perused the ruling of the learned Judge, we are unable to discern any error of principle or any perversity committed by him in finding himself justified to extend the appointment as prayed. We would have absolutely no basis upon which we would legitimately interfere with his exercise of discretion even were the issue still live, which we doubt.

The upshot of our consideration of this appeal is that it is devoid of merit and we accordingly dismiss it with costs.

**Dated and delivered at Nairobi this 20th day of December, 2018.**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

**D. K. MUSINGA**

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**JUDGE OF APPEAL**

**P. O. KIAGE**

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**JUDGE OF APPEAL**

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

DEPUTY REGISTRAR