



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: G.B.M KARIUKI JA (In Chambers))

CIVIL APPLICATION NO. NAI 252 OF 2016

CHANDARANA SUPERMARKETS LIMITED..... APPLICANT

VERSUS

CATHIE AKINYI SILINGA NANA RESPONDENT

(Application for extension of time to file Notice of Appeal and Record of Appeal out of time in an intended appeal from the judgment of the Employment and Labour Relations Court of Kenya at Nairobi (Wasilwa, J) dated and delivered on 27th day of June 2016

in

PETITION NO.1443 OF 2015)

RULING

The application before me as a single judge is premised in rule 4 of the Court of Appeal Rules. It seeks extension of time to give notice of appeal. More precisely, it seeks an order that the notice of appeal filed out of time on 14th September 2016 be deemed as duly filed.

Mr. Gomba, the learned counsel for the respondent, urges the court to postpone the hearing of the application on the ground that before the application was filed, the respondent had already filed an application to strike out the notice of appeal. He contends that if the application for extension of time is heard and succeeds, the respondent's application to strike out the notice of appeal shall be rendered nugatory and consequently the respondent shall suffer prejudice.

On his part, Mr. Kimani, the learned counsel for the applicant, contends that the application for extension of time was fixed for hearing today and if it is not heard first, the applicant shall suffer prejudice in the event that the application to strike out the notice of appeal succeeds and the notice of appeal is struck out.

Both counsel agreed to return to court on Friday, 24th February 2017 to argue the application for extension of time which was stood over to that date should the court overrule the objection by Mr. Gomba.

After a careful consideration of the rival arguments advanced by counsel each of whom claims their client will be prejudiced in the event the other party's application is heard first, I have come to the conclusion that as long as the court decision on the application for extension of time is not final, the contention that there will be prejudice does not hold good. In my view, a single judge may proceed to hear the application

for extension of time while an application to strike out notice is pending. The application fixed for hearing is a single judge matter while the pending application for striking out is a three judge Bench matter. The decision of a single judge is amenable to a reference and review by a full Bench of three judges.

In so far as the issue of alleged prejudice is concerned, where as here a single judge hears and determines an application for extension of time before the determination of the application for striking out, the fact that, the parties are entitled to seek a reference before a full Bench of three judges for review of the single judge decision is in itself a measure that counters the alleged prejudice as it provides both parties with opportunity to address the issues before a full Court in both applications.

In light of this, I turn down the objection by the Mr. Gomba. The application shall proceed to hearing.

Dated and delivered at Nairobi this 24th day of February, 2017.

G. B. M. KARIUKI SC

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR