



IN THE COURT OF APPEAL

AT MALINDI

(CORAM: OUKO, JA. IN CHAMBERS)

CIVIL APPLICATION NO.27 OF 2016

BETWEEN

JOHN CHARO NGUMBAOAPPLICANT

AND

AMANI TIWI BEACH RESORTRESPONDENT

(Being an appeal against part or section of the judgment of the Employment and Labour Relations Court of Kenya at Mombasa (Rika, J.) dated 19th June, 2015 in

Labour Relations Case No.221 of 2014)

RULING OF THE COURT

Judgment in the Employment and Labour Relations Court No. 221 of 2014 in which the applicant was the claimed, was determined against him on 19th June 2015, nearly one year today. Although he timeously lodged a notice of appeal, he has not filed the appeal. He therefore seeks by this application that due to delay attributable to the trial court, time for filing the appeal be enlarged; that the delay has been confirmed by a certificate issued by the trial court's Deputy Registrar to the effect that time taken in the preparation of copies of the proceedings and judgment was between 9th July 2015 and 15th March 2016. There is a copy of a letter on record dated 9th July 2015, a few days after the judgment was rendered. With this uncontroverted position the period of concern is between 15th March 2016 when the copies of the proceedings and judgment were made ready and 31st May 2016 when the instant application was taken out, a period of nearly two months.

The jurisdiction of a single judge under **Rule 4** of the **Court of Appeal Rules** pursuant to which this application has been brought has been defined over the years and the guidelines of what a single judge should consider are now settled. In the often-cited decision of **Leo Sila Mutiso v Rose Hellen Wangari Mwangi**, Civil Application No. NAI. 255 of 1997 that jurisdiction was spelt over as follows;

“..whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first, the length of delay; second, the reasons for the delay. Thirdly (possibly), the chances of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the respondent if the application is granted.”

It is apparent that three days after the judgment was delivered, the applicant lodged the notice of appeal. It is also confirmed that the delay upto 31st May 2016 was caused by the trial court.

The delay of two months before this application was instituted is not inordinate. The respondent though served with the hearing notice was not represented. It also did not respond to the application with the result that it can be concluded that it will suffer no prejudice should time be extended as prayed.

In the result, the motion dated 31st May 2016 is allowed, with no orders as to costs. The record of appeal will be filed and served within 14 days from the date of this ruling.

Dated and delivered at Malindi this 29th day of July, 2016

ASIKE-MAKHANDIA

.....

JUDGE OF APPEAL

W. OUKO

.....

JUDGE OF APPEAL

K. M'INOTI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR