



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MUSINGA, JA. (IN CHAMBERS))

CIVIL APPLICATION NO. 43 OF 2015

JULIUS MUSIVA OBUGA APPLICANT

AND

KENYA BROADCASTING CORPORATION RESPONDENT

(An application for extension of time within which to lodge and serve the notice of Appeal and Records of Appeal in the intended appeal from the judgment of the High Court Of Kenya at Eldoret (Nambuye, J.)

dated 3rd day of November, 2004

in

HCCC NO. 35 OF 1995)

RULING

1. The applicant, **Julius Masiva Obuga**, has filed an application under **rules 4 and 41** of the **Court of Appeal Rules** seeking extension of time to lodge and serve a notice of appeal and the record of appeal from the decision of the High Court delivered on 3rd November, 2004. The application as well as a hearing notice were served upon the respondent through their advocates, **M/s. Annassi Momanyi & Company**, on 9th June, 2015 but the said advocates neither filed a replying affidavit nor attended court when the application came up for hearing on 23rd June, 2015.
2. In his affidavit in support of the application, the applicant stated that immediately after delivery of the judgement which he intends to appeal against, he instructed **M/s. Ngala & Company Advocates** to lodge an appeal but the said advocates failed to file a notice of appeal in time or at all.
3. Thereafter the applicant decided to file a notice of appeal in person, which he did on 23rd November, 2004. The registry rejected the notice, saying it was not properly done.
4. The applicant applied for certified copies of the High Court Proceedings as well as the judgement but the court took a long time to avail the same to the applicant. The applicant did not however specify the date when the certified copies of the proceedings and judgment were eventually supplied to him.
5. The applicant contends that no prejudice will be suffered by the respondent if his application is

granted. He added that he is a poor retiree and has had challenges in raising funds to pursue this appeal.

6. In deciding an application for extension of time such as this one, the court exercises judicial discretion. The court takes into consideration the length of the delay, the reason for the delay, the chances of success of the intended appeal and the degree of prejudice that the respondent is likely to suffer if the application is allowed. See **LEO SILA MUTISO V ROSE HELLEN WANGARI MWANGI, Civil Appeal No. Nai 255 of 1997.**

7. The applicant is a former employee of the Kenya Broadcasting Corporation and had filed suit against his former employer seeking, *inter alia*, damages for unlawful dismissal, payment of pension and/or pension arrears, among other reliefs.

8. The suit was dismissed on 3rd November, 2004 and although his advocates did not act on his instructions to file a notice of appeal, the applicant personally filed one on 23rd November, 2004. The same has been exhibited in the applicant's affidavit in support of the application.

9. **Rule 75 of the Court Of Appeal Rules** stipulates that any person who desires to appeal to this Court shall file a notice of appeal within fourteen days of the date of the decision against which it is desired to appeal. Although the notice filed by the applicant on 23rd November, 2004 was admittedly late by about six (6) days, I think the registry should not have rejected it. Instead, the registry ought to have advised the applicant to file an application for extension of time.

10. The applicant has now brought the appropriate application almost ten (10) years after the date of the impugned judgment. However, he is not entirely to blame for that delay, which is by no means inordinate. The Court registry as well as his former advocates also contributed to that delay.

11. As regards the chances of success of the intended appeal, all I wish to say is that it is arguable. An arguable appeal is not one which must succeed, it is one that raises grounds that merit this Court's consideration.

12. Lastly, I do not think that the respondent will be prejudiced in any way if this application is allowed. As earlier stated, the respondent, though served with the application and a hearing notice, chose not to oppose the application.

13. Consequently, I allow this application and direct that the notice of appeal as well as the record of appeal be filed within fourteen (14) days from the date of this ruling. I make no orders as to costs.

DATED AT ELDORET THIS 23RD DAY OF JUNE, 2015

D. K. MUSINGA,

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR