



IN THE COURT OF APPEAL

AT MALINDI

(CORAM: M'INOTI, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. 47 OF 2015

BETWEEN

STEPHEN MUNGA.....APPLICANT

AND

MINISTER FOR INTERIOR &

NATIONAL COORDINATION.....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

OFFICER COMMANDING POLICE DIVISION RABAI.....3RD RESPONDENT

OCS RABAI POLICE STATION.....4TH RESPONDENT

(An application for extension of time to file notice of appeal and record of appeal in an intended appeal against the ruling and order of the High Court of Kenya at Mombasa, (Emukule, J.) dated 15th May 2015

in

HC MISC APP. No. 34 of 2014)

RULING

By his Notice of Motion dated 10th August 2015, the applicant, **Stephen Munga**, seeks extension of time to file a notice of appeal and a record of appeal against the ruling of the High Court of Kenya at Mombasa (**Emukule, J.**) dated 15th May 2015. The respondents, although duly served through the office of the Attorney General did not file any replying affidavit in opposition to the application and did not appear during the hearing of the application to oppose the same. As it is the applicant's averments remain entirely uncontroverted.

The ruling against which the applicant, a police officer, intends to appeal arose from judicial review proceedings in which he was seeking an order of certiorari to quash his conviction following Orderly Room Proceedings and an order of prohibition to stop the County Police Commander, Kilifi, from acting

on the said conviction. The Orderly Room Proceedings were initiated against him after he allegedly failed to report on duty 18th December 2013. When served with a charge sheet, the applicant again failed to attend the proceedings, claiming that on the date scheduled for the hearing he was assigned other duties elsewhere. The proceedings were conducted in the applicant's absence, although the presiding officer did appoint a Police Inspector to represent him.

Upon being convicted, he took out the judicial review proceedings, which the High Court dismissed on 15th May 2015 after finding the same lacking in merit.

The applicant's explanation for his failure to file a notice of appeal within the prescribed time is that the High Court directed that the judicial review application be heard by way of written submissions and that the ruling would be delivered on notice. No notice of the date scheduled for delivery of the ruling was ever given to his advocate and when he eventually learnt that the ruling had been delivered, the time for filing the notice of appeal had already expired. Nevertheless he promptly filed the current application on 11th August 2015.

I have duly considered the application. The power of the Court to extend time under rule 4 is discretionary and unfettered, subject to the requirement only that the exercise of the discretion must be judicious. In the exercise of that power the court considers among other things the explanation for the delay, the length of the delay, possibly the chances of success of the intended appeal, whether any public interest is implicated in the intended appeal, and the prejudice likely to be suffered by the other party. (See ***LEO SILA MUTISO V. ROSE HELLEN WANGARI MWANGI, CA NO. NAI. 255 OF 1997***).

In the absence of any controverting evidence, I will take it that the reason for failure to file the notice of appeal on time is satisfactorily explained and in any event I find that the delay is not inordinate. I also find that there is no material upon which I can find that granting of this application will prejudice the respondents.

As regards the possible chances of success of the intended appeal, the applicant has annexed to his application a rather prolix and repetitive draft memorandum of appeal listing some 20 grounds of appeal, which among others raise issues of fair administrative action. I am not able to state at this stage that the intended appeal has no chances of success.

Having considered all the foregoing, I am persuaded that this is a deserving application for extension of time. Accordingly I allow the same and direct the applicant to file and serve upon the respondents a notice of appeal within 7 days from the date of this ruling. The record of appeal shall be filed within 30 days of the filing of the notice of appeal. Costs of this application shall abide the outcome of the intended appeal.

Dated and delivered at Malindi this 11th day of December, 2015

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR