



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MARAGA, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. 328 OF 2014

BETWEEN

THE UASIN GISHU COUNTY GOVERNMENT.....APPLICANT

AND

THE NORTH RIFT MOTOR BIKE TAXI

ASSOCIATION (NRMBTA).....RESPONDENT

(An Application for extension of time to file appeal from the Judgment and Decree of the

High Court of Kenya at Eldoret (Ngenye-Macharia, J.) dated 1<sup>st</sup> October, 2014

in

H.C. PETITION NO. 3 OF 2014)

\*\*\*\*\*

### R U L I N G

1. On 1<sup>st</sup> October 2014, the High Court (Ngenye-Macharia, J.) declared the Uasin Gishu County Finance Act of 2013 null and void for contravening **Articles 1(1), 10(2)(a) and 196(1)(b)** of the Kenya Constitution, 2010 as well as **Section 87** of the County Governments Act 2012. Aggrieved by that decision, the Uasin Gishu County Government, the applicant, filed a notice of appeal on 8<sup>th</sup> December 2014, thus evincing its decision to appeal that judgment.

2. The filing of the notice of appeal on 8<sup>th</sup> December 2014 was out of the period of 14 days allowed by **Rule 75(2)** of the Court of Appeal Rules for preferring appeals to this Court. This application, brought, inter alia, under **Rule 4** of the Court of Appeal Rules, seeks enlargement of time to deem that notice of appeal as having been filed with leave of this Court.

3. From the grounds stated on the face of the application and the averments in the affidavit of Peter Leley, the applicant's County Secretary, sworn on 8<sup>th</sup> December 2014 in support of this application, the reason given for the delay in filing the notice of appeal was failure to obtain copies of the proceedings and judgment in time. In his submissions before me, Mr. Yego, learned counsel for the applicant, added that after the delivery of the High Court judgment, it took time before his firm received instructions from the

applicant to appeal the decision. Counsel concluded that if this application is not allowed, the applicant will suffer great prejudice as it will be required to refund the tax paid by the respondents and other tax payers under the impugned Act, which taxes have already been utilized in the provision of services to the residents of the County.

4. Opposing the application, Mr. Kigamwa, learned counsel for the respondent, submitted that the applicant did not require copies of the proceedings and judgment to file the notice of appeal. The delay in filing the notice of appeal has therefore not been explained. Moreover, counsel further argued, in the absence of a draft memorandum of appeal, the applicant has not demonstrated that its intended appeal is arguable. In the circumstances, counsel urged me to dismiss this application with costs.

5. It is trite law that in an application such as this for enlargement of time under Rule 4 of the Court of Appeal Rules, the applicant is supposed to satisfactorily explain the delay or failure to file the notice or record of appeal in time and also demonstrate that he has an arguable appeal. An arguable appeal, as this Court has repeatedly stated, is not one that will necessarily succeed.

6. Having considered the matter, I am satisfied that the applicant has explained the delay. The applicant being a County Government, a copy of the judgment needed to be obtained and given to the County Government to study it and decide whether or not to appeal against it. On this ground, I find that the delay for a period of about two months was not inordinate and, as I have said, has satisfactorily been explained.

7. Whether or not the enactment of the Finance Act contravened the Constitution and/or the County Governments Act is an arguable point. I therefore also find that the applicant's intended appeal is arguable.

8. For these reasons, I grant this application. The applicant's notice of appeal filed on 8<sup>th</sup> December 2014 is hereby deemed as having been filed with leave of Court. The applicant shall file and serve the record of appeal within thirty days of the date hereof. The costs of this application shall abide the outcome of the intended appeal.

**DATED and delivered at Eldoret this 8th day of December, 2015.**

**D.K. MARAGA**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**