



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI 224 OF 2013

BETWEEN

A L S.....APPLICANT

AND

C T S.....RESPONDENT

(An application for extension of time to file Notice of Appeal out of time from the Ruling and Orders of the High Court of Kenya at Nairobi (W. M. Musyoka, J.) dated 27th June 2013

in

DIVORCE CAUSE NO.172 OF 2011)

R U L I N G

The applicant herein filed the notice of motion dated 21st August, 2013 under the provisions of Rules 4, 42 of this Court with 2 prayers:

- i. that she be granted leave to file a notice of appeal against the ruling delivered on 27th June, 2013 out of time; and***
- ii. that she also be granted leave to lodge record of appeal against the ruling aforesaid out of time.***

As per the grounds in the body of the motion, the supporting affidavit and the submissions by her counsel, **Mr. Marete** it was stated that the ruling sought to be appealed against was slated for delivery on 24th June, 2013 in the High Court (**Musyoka, J.**). On that day the learned Judge was not sitting and the parties were informed that the ruling could be delivered on notice. No such notice issued to the applicant for the delivery date – 27th June, 2013. She did not know of this delivery until the respondent notified her by e-mail on 1st August, 2013 – about two months later. The applicant instructed counsel to apply for leave to appeal out of time but due to her international job travels abroad, she could not sign the relevant

supporting affidavit until 19th August, 2013. The motion was then filed on 28th August, 2013 – hence the orders sought.

Mr. Kali, learned counsel for the respondent arrived as the proceedings were going on and notified the Court that his firm was only served with the hearing notice which stated that the matter for argument touched on leave to enlarge time. The notice of motion itself was not served. On being acquainted with the substance of motion and asked whether or not he desired to be granted time to respond to it, **Mr. Kali** told me that I could proceed in my discretion to determine the motion on the material presented.

On considering the reasons presented, it appears that the applicant has placed before me a case that deserves the orders sought. On the initial date noted to deliver the ruling under review, that did not happen. Parties were told that the ruling could be delivered on notice. Such a notice did not issue to the applicant for the 27th June, 2013 when the ruling was delivered. Had such a notice gone out to her, time to file notice of appeal and the appeal itself could have begun to run on 27th June, 2013. But then she did not know that the ruling had been delivered until August, 2013 when the respondent informed her of the delivery. That justifies her move to apply for orders as set out in the present motion. She came to know of the date the ruling was delivered long after the statutory period to lodge the notice of appeal or the appeal itself had long expired.

With the above reasons I am satisfied that the applicant is not invoking the powers donated by Rules 4, 42 of this Court to frustrate the cause of justice in one way or another. For had that appeared to be the motive to bring this motion, orders sought could be refused because the cited Rules are not meant to assist indolent and inattentive litigants but to come to the aid of the alert and diligent litigants desirous to pursue ends of justice.

Accordingly, the applicant is granted seven (7) days to file the requisite notice of appeal and thereafter file her record of appeal in 30 days. Costs of this application will be in the appeal.

Dated and delivered at Nairobi this 31st day of January, 2014

J. W. MWERA

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JUDGE OF APPEAL

I certify that this is

A true copy of the original

DEPUTY REGISTRAR