



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GITHINJI, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAI 169 OF 2014

BETWEEN

NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES.....APPLICANT

VERSUS

CENTRAL ORGANIZATION OF TRADE UNIONS.....1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF LABOUR

SOCIAL SECURITY & SERVICES.....1ST INTERESTED PARTY

THE HON. ATTORNEY GENERAL2ND INTERESTED PARTY

(Being an Application seeking an extension of time to file and serve the notice of appeal in the appeal against the Judgment and/or orders of the High Court of Kenya at Nairobi (G. V. Odunga, J.) dated 8th April, 2014 in HC MISC. APPL. NO. 21 OF 2014)

RULING

This is an application under **Rule 4** of the **Court of Appeal Rules, 2010** for extension of time within which to file and serve the notice of appeal. The applicant seeks a further order that the notice of appeal filed on 6th May 2014 and served upon the counsel for the respondent and interested parties on 9th May 2014, be deemed as having been validly filed and served.

The application is supported by the affidavit of **Mr. Ngatia**, learned counsel for the applicant which explains the reasons for the delay. The application is supported by **Mr. Bitu**, learned counsel for the 1st and 2nd interested parties. However, the application is opposed by the respondent. **Judith Guserwa**, learned counsel for the respondent has filed a replying affidavit opposing the application on the grounds that the applicant being a corporate body should have filed the notice of appeal on time and that the delay of 14 days has not been explained.

The principles governing applications for extension of time are well established and do not require repetition. See **Wasike v Swala [1984] KLR 591**. The Court has a discretion which should be exercised judicially having regard to the length of the delay, reasons for the delay, merits of the appeal or intended appeal, and the prejudice likely to be caused to the respondent if the application is allowed.

In this case, the applicant has filed the notice of appeal. In addition, the applicant has already filed Civil Appeal No. 119 of 2014 within the time prescribed by the Rules. The notice of appeal has also been served on the respondent and the interested parties. The only irregularity is that the notice of appeal was not filed and served within the prescribed time.

The judgment appealed from was delivered on 8th April 2014. The notice of appeal should have been filed within 14 days, that is on or about 23rd April 2014 and ought to have been served within 7 days – that is on or about 30th April 2014. The notice of appeal was filed on May 2014 which is 13 days out of time. It was served on 9th May – 9 days late. The present applicant’s counsel did not conduct the proceedings in the High Court and had explained that he had to file an application for leave to act for the applicant which application was allowed by consent on 25th April 2014.

The delay which is not inordinate has been satisfactorily explained. The delay has not caused any prejudice to the respondent and an order for costs would be sufficient compensation.

Accordingly, the application is allowed as prayed with costs to the respondent.

Dated and delivered at Nairobi this 25th day of September, 2014.

E. M. GITHINJI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR