



REPUBLIC OF KENYA

Court of Appeal at Nairobi

Civil Application 67 of 2013

BETWEEN

CARLILE COLLEGE.....APPLICANT

AND

PETER KARANJA KURIA.....RESPONDENT

(Application for extension of time to file the record of appeal from the Judgment and Decree of the Industrial Court at Nairobi (Hon. Justice Byram Ongaya) dated 16th November, 2012)

in

INDUSTRIAL C.C. NO. 561 OF 2012)

RULING

- 1.** This is an application brought under **Rules 4** and **42** of the **Court of Appeal Rules**. It seeks leave of this Court to file the record of appeal out of time.
- 2.** In the affidavit in support of the application, Willy Soita Simiyu, counsel for the applicant, deposed that the judgment the applicant wishes to appeal against was delivered on 16th November 2012 and the Notice of Appeal was lodged on 19th November 2012. The applicant's advocates formally applied for copies of the proceedings vide their letter dated 20th November 2012 and copied the letter bespeaking of proceedings to the respondent. Although certified copies of the proceedings were ready on 5th March 2013, which I think was meant to be 5th February 2013 his office collected them on 11th February 2013. Counsel then applied for a Certificate of Delay on 11th February 2013, but on 18th February 2013 he was told that his application had been misplaced and he had to apply afresh which he did. He received the Certificate of Delay on 12th March 2013 by which time, according to him, the period for filing the record of appeal had expired hence this application.
- 3.** In his submissions before me, Mr. Chahenza, counsel for the applicant reiterated the above averments and urged me to grant this application.
- 4.** In response, the respondent urged me to dismiss this application as it is not made in good faith. In his view it is a delaying tactic intended to deny him the fruits of his judgment. Relying on the averments in his replying affidavit, he submitted that he himself got copies of the proceeding on 6th February 2013 and

because he wanted this matter finalised as soon as possible, he gave a copy thereof to the applicant's advocates. Despite that and although the applicant's advocates collected other copies of the proceedings on 11th March 2013 and were issued with the Certificate of Delay on 12th March 2013, on 14th March counsel for the applicant, while seeking stay of execution, told the Industrial Court that he had not received the Certificate of Delay. In the circumstances he urged me to dismiss this application with costs.

5. I have considered these rival submissions. As is clear from the above narration, the applicant timeously lodged the notice of appeal and applied for proceedings. Having copied its letter bespeaking of proceedings to the respondent pursuant to **Rule 82(1)** of the Rules, as the proviso to **Rule 82(1)** provides that the period taken for the preparation and delivery to the appellant of the proceeding shall be excluded from the computation of time, the Deputy Registrar of the Industrial Court having certified that the period from 19th November 2012 to 12th March 2013 was required for preparation and delivery of the court proceedings, the applicant had 58 days from 12th March 2013 to file the record of appeal. If my computation is right, he had upto 9th May 2013 to file the record of appeal.

6. It follows that this application was filed prematurely and was actually unnecessary. As the period for filing the record of appeal has now expired, I allow this application and direct the applicant to file and serve its record of appeal within fifteen (15) days of the date hereof. The costs of this application shall be costs in the appeal.

DATED and delivered this 24th day of May 2013.

D.K. MARAGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR