



IN THE COURT OF APPEAL

AT NYERI

(CORAM: ALNASHIR VISRAM, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. NYR. 6 OF 2013

BETWEEN

EPHANTUS WACHIRA NGOCHI.....APPLICANT

AND

EDWARD NJOROGE MWANGI.....RESPONDENT

((An application for extension of time to file notice and record of appeal in an intended appeal against the Ruling and Order of the High Court of Kenya at Nyeri (Ombwayo, J) dated 19th March, 2013

in

H. C. C. No. 228 of 2012)

RULING

This is an application under **Rule 4** of the Court of Appeal Rules for extension of time to file a notice of appeal and record of appeal, from the ruling and order of the High Court of Kenya at Nyeri (Ombwayo, J.) dated 19th March, 2013. The application is supported by the affidavit of Ephantus Wachira Ngochi sworn the 22nd May 2013.

As I stated, the ruling in the case before the High Court was delivered on 19th March, 2013. However, the applicant in his deposition says that his advocate was not informed of the final date the ruling of the High Court would be delivered; that it was initially set for delivery on 19th February, 2013; that it was adjourned again to 28th February, 2013; and eventually read on 19th March, 2013 in the absence of his advocate, and without his knowledge. He depones that once he found out about the ruling, he promptly made this application for extension of time.

Based on the above facts, Mr. A. M. Nganga, learned counsel for the applicant, urged that the prayers be granted, as the application was timeously made, and deserving of this Court's discretion.

However, Mr. George M. Gori, learned counsel for the respondent, opposed the application, arguing that the delay herein was not properly explained; that indeed the court had issued and served the notice of the delivery of the ruling; and that this application was an abuse of the court process.

Having considered the application and the depositions in support of the same, and having heard counsel, I am of the view that the delay in bringing this application, is not inordinate, and is well explained. **Rule 4** of the Rules of this Court gives me unfettered discretion whether to extend time or not. However, that discretion has to be exercised judiciously, and in accordance with the principles set out in **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi – Civil Application No. NAI. 251 of 1997** where this Court stated:

“It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are first the length of the delay. Secondly, the reason for

the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted.”

I have taken into account all the factors indicated above, and am of the view that this application has merit, and I allow the same. The appeal is arguable, and indeed, deserving of this Court's discretion.

Accordingly, I hereby allow the application, and order that the notice of appeal shall be filed and served within the next seven days, and the record shall be filed and served within the next 14 days, failing either of which, this appeal shall stand dismissed. The costs of this application shall be in the appeal.

Dated and delivered at Nyeri this 25th day of July, 2013.

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR