



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI. 86 OF 2011 (UR.57/2011)

BETWEEN

AHMED ALI GURE.....APPLICANT

AND

DAUDI SETHE DIFF.....RESPONDENT

(An application for leave for extension of time to file and serve Notice of Appeal and Record of Appeal out of time from the Ruling of the High Court of Kenya at Nairobi (Ang'awa, J) dated 8th May, 2008

in

Civil Appeal No. 12 of 2003)

RULING

This is an application under **Rule 4** of the Court of Appeal Rules for extension of time to file an appeal from the ruling and order of the superior court (Ang'awa, J) dated 8th May, 2008. The application is supported by an affidavit sworn by the applicant, Ahmed Ali Gure.

The ruling in the case before the superior court was delivered on 8th May, 2008, and a notice of appeal was indeed filed on time. However, it was subsequently withdrawn. The reasons for the withdrawal of the notice of appeal are not clear. The applicant simply says in his deposition that “the notice of appeal was withdrawn in good faith since I approached several institutions ...”.

Having withdrawn the notice of appeal, the applicant went to slumber until 6th April, 2011 when this application was filed for extension of time. That is almost three years after the expiry of time for filing the notice of appeal. And his explanation for the delay? That he was “in and out of court corridors trying to have the court orders interpreted.” That says almost nothing, and cannot be accepted as a proper explanation for the three year delay.

I agree with the submissions of Mr. Marete, learned counsel for the respondent, that the delay herein is inordinate and unexplained.

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, including the fact that this is an old case that was filed in the superior court in 2001. All litigation should come to an end at some point, and so should this, at this point. To do otherwise would send the wrong message to the litigants – that it is all right to sleep on your rights and we will welcome you anytime you wake up! Clearly, the Rules of this Court must be followed, and the applicant herein has not provided me with sufficient justification to grant it the indulgence sought.

Accordingly, and for reasons outlined, I am of the view that this application has no merit, and the same is disallowed. The respondent shall have the costs of the application.

Dated and delivered at Nairobi this 17th day of June, 2011.

ALNASHIR VISRAM

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR