



IN THE COURT OF APPEAL

AT NAIROBI

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

CIVIL APPLICATION NO. NAI. 79 OF 2011 (UR. 54/2011)

BETWEEN

OSHWAL ACADEMY (NAIROBI).....1ST APPLICANT

OSHWAL EDUCATION AND RELIEF BOARD.....1ST APPLICANT

AND

INDUVISHWANATHRESPONDENT

(An application for extension of time to file notice of appeal from the award decree of the Industrial Court of Kenya (Kosgei, J.)

dated 29th October, 2010

in

IND. CAUSE NO. 110 (N) OF 2009)

R U L I N G

The motion dated 30th March, 2011, as orally amended without objection, seeks extension of time to file and serve both notice of appeal and record of appeal, to challenge the decision of the Industrial Court made on 29th October, 2010. The main reason advanced for such prayer is that the decision of the court was made without any notice being served on the applicant or his advocate and the advocate only became aware of it on 18th March, 2011 and filed this motion thirteen days later on 31st March, 2011. The further reason advanced for the two week delay was that the applicants’ advocate’s mother died on 15th March, 2011 and was buried on 23rd March, 2011. There was therefore no inordinate delay in filing the application. I am also informed by learned counsel for the applicant, Mr. A.B. Shah, that the intended appeal raises valid and cogent issues of fact and law relating to interpretation of unfair labour practice, redundancy, fixed term contracts, and severance pay.

There is no denial by the respondent that the advocates on record for the applicants were not notified about the delivery of the decision of the Industrial Court. The contention is rather that the applicant or his advocates ought to have followed up on the delivery of the award but have shown no evidence of any efforts having been made. That is why the respondent’s advocates, who were present at the delivery of the

award, proceeded to extract the decree which was issued on 17th January, 2011, and therefore, it would be unjust to delay further the enjoyment by the respondent of the fruits of his judgment. Learned counsel for him, Mr. Kamwaro, submitted that it had taken the applicant five months since October, 2010 to file the application which was inordinate delay and even if it was accepted that the advocate became aware of the award on 18th March, 2011, it took another two weeks which in the circumstances was also inordinate. In his view, there was no duty on the respondent to notify the applicants that an adverse decision had been made against them as it was upon the applicants to follow up.

I have considered the application and the submissions of counsel. The record of proceedings before the Industrial Court confirms the contention made by the applicant that there was no notice issued to them or their advocate to attend court when the award was delivered. As stated earlier that contention is not denied by the respondent. No reason has been advanced for this basic omission by the court to comply with basic rules of natural justice. The least that could have been done to ameliorate the omission was to inform the applicants that the judgment had been delivered against them and require compliance with whatever orders were made. None of that was done. Not even the draft of the extracted decree was forwarded to the respondents for their approval or at all before it was issued. It seems to me that the entire process was conducted in a clandestine manner devoid of fairness and on that ground alone I would accede to the prayers made by the applicant in this motion. Accordingly, the application is granted. The applicants shall file and serve the notice of appeal within seven days of this order. The record of appeal shall be filed and served within 14 days of service of the notice of appeal. The costs of the motion shall be in the intended appeal.

Dated and delivered at Nairobi this 3rd day of June, 2011.

P.N. WAKI

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR