



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA PEAL
AT NAIROBI**

Civil Appli. Nai 70 of 2006 (UR/37/06)

RAWSON MBUGUA MACHARIA.....APPLICANT

AND

GEORGE KIOGORA KARONGA.....1ST RESPONDENT

DUNCAN MBUTI MBUGUA.....2ND RESPONDENT

FRANCIS BOB KAMAU.....3RD RESPONDENT

(An application seeking leave for the extension of time to file and serve records of appeal out of time in the intended appeal from the Orders of the High Court of Kenya at Nairobi, (Aluoch, J) dated 23rd October, 2002 and (Koome, J) dated 12th March, 2004

in

H.C.SUCC. CAUSE NO. 2830 OF 2001)

RULING OF THE COURT

This is yet another reference by the applicant this time from the decision of a learned single Judge of this Court on a Notice of motion brought under rule 4 of the Rules of this Court in which the applicant RAWSON MBUGUA MACHARIA sought an order to further extend time within which to file and serve records of appeal in two separate intended appeals.

The record shows that on 19th December, 2005 a full bench of this Court pursuant to a reference granted the applicant an extension of time within which to file and serve the records in two separate intended appeals. It is common ground that no appeals were filed before the time granted by the Court and hence the application before the learned single Judge.

The application came for hearing on 22nd September, 2006. The applicant who is seriously hard of hearing prosecuted his application in person. Mr. Kimiti, Advocate, appeared for the 1st and 3rd respondents. In his ruling the learned single Judge held:-

“It is however, clear from the record of the application that the applicant did not take steps to apply for copies of those proceedings until 16th January, 2006, two days after the period he had been granted to file a record of appeal. He has not explained why it took him that long to do so. Besides, he has not

explained why he did not bring this application until about two months after the time he had been granted by this Court to file records of appeal had expired.”

The learned single Judge found the delay inordinate and not having being satisfactorily explained. He was disinclined to exercise his discretion in favour of extending the time as prayed and dismissed the application.

Before us, the applicant submitted that the whole cause of the delay in mounting the appeal within the time limited by the Court was his then counsel, Mr. Wahome, who did not procure the necessary proceedings necessary to lodge the appeals. However, this assertion was never mentioned before the learned single Judge and is a new ground which cannot in the circumstances be raised for the first time in a reference. We reject it.

Again, the applicant contends that the learned single Judge did not give him sufficient time to urge his application and that the Judge was merely “dictated to by Mr. Kimiti”. With respect, this ground must fail. The records laid before us show that the applicant was accorded full opportunity to canvass his application and was before the conclusion of the hearing asked to reply to Mr. Kimiti’s submissions. The records speak for themselves.

We have checked the records and we have also considered fully the rival submissions of the parties. It is worthy of note that the applicant fully admits all his omissions, though he has meekly tried to pass over the buck to his then counsel. He has not, however, in our view, demonstrated any instances of the learned single Judge’s taking into account some irrelevant factor, or his failing to take into account a relevant factor, or his not applying a correct principle to the issues before him. Further, the applicant has not shown that taking into account all the circumstances of the case, the decision by the learned single judge is plainly wrong.

In the result, we have no reason to interfere with the single learned Judge’s decision and the reference must fail. It is dismissed with costs to the 1st and 3rd respondents.

DATED and DELIVERED at NAIROBI this 4th day of May, 2007.

P.K. TUNOI

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JUDGE OF APPEAL

E.O. O’KUBASU

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JUDGE OF APPEAL

P.N. WAKI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR