



REPUBLIC OF KENYA



KENYA LAW
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Gathoni & another ((suing as Administrators of the Estate of John Kiunuhe Njenga (Deceased)) v Alios Finance Kenya Limited (Cause 2084 of 2016) [2024] KEELRC 30 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEELRC 30 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2084 OF 2016
L NDOLO, J
JANUARY 25, 2024

BETWEEN

SABINA GATHONI 1ST CLAIMANT

JANE WAMBUI GATHURU 2ND CLAIMANT

(SUING AS ADMINISTRATORS OF THE ESTATE OF JOHN KIUNUHE NJENGA (DECEASED))

AND

ALIOS FINANCE KENYA LIMITED RESPONDENT

RULING

1. On October 28, 2021, Nzei J delivered judgment in favour of the claimants, Sabina Gathoni and Jane Wambui, being Administrators of the Estate of John Kiunuhe Njenga, in the following terms:
 - a. Kshs. 202,500 being accrued house allowance;
 - b. Kshs. 16,560,000 being loss suffered by the Deceased's Estate as a consequence of the Respondent's failure to take out an appropriate insurance policy as stipulated in the Deceased's employment agreement;
 - c. Costs plus interest.
2. The respondent subsequently filed a Notice of Motion dated April 22, 2022, seeking leave to file a Notice of Appeal out of time.
3. The Motion is supported by an affidavit sworn by the respondent's counsel, Isaac Onyango Oloo and is based on the following grounds:



- a. That the court has the powers to enlarge time notwithstanding the fact that the time may have lapsed;
 - b. That the respondent, being dissatisfied with the judgment of the court intends to file an appeal in the Court of Appeal;
 - c. That judgment was delivered virtually on October 28, 2021, a date of which the respondent's Advocates were not notified;
 - d. That the respondent's Advocates made inquiries on the position of the case but there was no official communication from the Court;
 - e. That the respondent's Advocates came to know of the judgment from the claimant's Advocates on April 14, 2022, a day before the Easter holiday;
 - f. That the respondent secured a copy of the judgment on April 19, 2022, the Tuesday after the Easter holiday;
 - g. That the delay in filing the Notice of Appeal was not intentional and was beyond the control of the respondent.
4. The claimant did not oppose the application. Under Section 7 of the *Appellate Jurisdiction Act*, this court has power to extend time for giving of notice of intention to appeal to the Court of Appeal. This power is discretionary and its exercise must therefore be accounted for.
5. In its decision in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR the Supreme Court of Kenya laid down the following foundational principles to govern the exercise of discretion in applications for extension of time:
- a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time is a consideration to be made on a case to case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 - e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
 - f. Whether the application has been brought without undue delay; and
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
6. From the record, it is evident that judgment in this case was delivered in the respondent's absence and there is no evidence that a judgment notice was issued. In the circumstances, I am persuaded that this is a proper case for the court to exercise discretion to extend time for filing of a Notice of Appeal.
7. The draft Notice of Appeal shall be deemed duly filed upon payment of court fees.
8. The costs of this application will be costs in the appeal.
9. Orders accordingly.



DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF JANUARY 2024

LINNET NDOLO

JUDGE

Appearance:

No appearance for the Claimant

Mr. Aloo for the Respondent

