



Agadamba v Amoit t/a Global Care Solutions Nuts & Oil International (Miscellaneous Application E205 of 2022) [2024] KEELRC 925 (KLR) (5 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 925 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E205 OF 2022**

AN MWAURE, J

APRIL 5, 2024

BETWEEN

WYCLIFFE CHANZU AGADAMBA CLAIMANT

AND

**CATHERINE AMOIT T/A GLOBAL CARE SOLUTIONS NUTS & OIL
INTERNATIONAL RESPONDENT**

RULING

1. The Claimant/ Applicant filed Notice of Motion dated 25th March 2022 seeking orders that:
 1. Applicant be granted leave to lodge an appeal out of time against the whole judgment of Hon. Lilian Lewa(PM) delivered on 5th October 2021 at the Chief Magistrate’s Court in Nairobi, Cause No.1436 of 2019 as per the copy annexed to this application
 2. the costs of this application be met in the course.

Claimant/ Applicant’s Case

2. The Claimant/ Applicant avers that he filed a Memorandum of Claim on 20/08/2019, however, the Respondent never filed a defence on the same. The matter was mentioned on 07/04/2021 and it was ordered that it proceeds undefended.
3. The Claimant/Applicant avers that the matter was heard on 14/06/2021 and judgment was to be delivered on 23/09/2021 but the parties were advised they will be notified when judgment would be delivered.
4. The Claimant/Applicant avers that his advocates were later advised through the registry that judgment had been delivered on 05/10/2021. The advocates made several demands for the judgment and finally lodged a request for a certified copy of the judgment on 19/11/2021.



5. The Claimant/Applicant avers that his advocates subsequently made payment for the copy of judgment on 23/11/2021, however, to date they are yet to receive it despite making follow ups at the registry.
6. The Claimant/Applicant avers that Hon Lilian Lewa delivered her judgment on 05/10/2021 dismissing his claim entirely.
7. The Claimant/Applicant avers that it was not until 25/02/2022 that he walked into his advocate's offices and advised via written statement that On 04/11/2021, he was robbed his phone and other valuables and reported the matter at Jogoo Road Police Station under O.B No.43/3/11/204.
8. The Claimant/Applicant avers that as a result of all the delays caused by waiting for a certified copy of judgment coupled with his advocates inability to reach him for directions, the time allowed to file an appeal had run out.
9. The Claimant/Applicant avers that the delay was not occasioned by himself or his advocates.

Analysis and Determination

10. Having considered the Notice of Motion and submissions filed, the main issue for determination is whether the Claimant should be granted leave to file an appeal outside time.
11. The principles applicable to an application for enlargement of time were discussed by the Supreme Court in the case of in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:

“This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. 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;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; ...”
12. Further, *In re Estate of Kimunye Maina (Deceased)* (Miscellaneous Succession Cause E001 of 2020) [2022] KEHC 486 (KLR) (4 May 2022) (Ruling) the court held: -

“The decision to extend time to appeal out of time is discretionary. In exercise of that discretion, the court is supposed to take into account the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted and the degree of prejudice to the respondent if the application is granted.



I have noted that in Stanley Kaiyongi case, the court quoting the case of Leo Sila Mutiso v Rose Hellen Wangari Mwangi stated as follows:

“it is now well 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.”

13. The Claimant/Applicant avers that the delay which was occasioned in filing the appeal was occasioned by the registry’s failure to avail a certified copy of judgment and his alleged loss of phone and so inability for his advocate to communicate to him.
 14. However, this court notes that the Claimant and/or his advocates only followed up on the certified copy of judgment vide a letter dated 19/11/2021. They however aver that they followed the same physically several times. Judgment was delivered on 5th October 2021 and finally the application was filed on 25th March 2022.
 15. The claimant says despite paying for fees for the certified judgment to date he has not received a copy of the same. This is unfortunate and the Deputy Registrar of magistrate’s court should explain this unreasonable delay to procure the judgement.
 16. The claimant further says he lost his phone and reported to police as per the OB No is 43/3/11/204, hence his lawyer was unable to reach him for instructions until 25th February 2022 when he went to his advocates office.
 17. The court is persuaded to use its discretion and give the claimant an opportunity to prosecute his appeal since the Constitution of Kenya and rules of natural justice provide that every person has a right to be heard. The court is always conscious not to lock any party out of the corridors of justice. In that case the court has given the claimant a right to file his record of appeal within 45 days hereof failure of which this order will lapse.
 18. Costs will be in the intended appeal.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF APRIL, 2024.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159 (2) (d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of



the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

