



**King'oo v Treadsetters Tyres Limited (Miscellaneous Application
E136 of 2024) [2024] KEELRC 13334 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13334 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E136 OF 2024**

**L NDOLO, J
DECEMBER 5, 2024**

BETWEEN

LAWRENCE KAVITA KING'OO APPLICANT

AND

TREADSETTERS TYRES LIMITED RESPONDENT

RULING

1. What falls for determination is the Applicant's Notice of Motion dated 25th April 2024 seeking leave to appeal out of time, against the judgment of Hon Wafula Mbayaki, PM delivered on 30th November 2023 in Milimani Chief Magistrate's Court Employment Case No E460 of 2021: Lawrence King'oo Kavita v Treadsetters Tyres Limited.
2. The application is supported by the Applicant's own affidavit and is based on the following grounds:
 - a. That the matter emanates from the lower court suit being Milimani Chief Magistrate's Court Employment Case No E460 of 2021: Lawrence King'oo Kavita v Treadsetters Tyres Limited;
 - b. That the suit was scheduled for judgment on 24th October 2023 but the trial Magistrate was away on official duty and another judgment date was issued for 6th November 2023;
 - c. That on 6th November 2023, the judgment was not ready and was rescheduled to be delivered on 30th November 2023;
 - d. That on 30th November 2023, the Court was not sitting and parties were informed that judgment would be delivered on notice;
 - e. That after numerous inquiries about the date of delivery of the judgment, the Applicant logged into the Magistrate's court session on 24th April 2024, and inquired about the judgment only to be informed that judgment had been delivered on 30th November 2023 and the Applicant's suit dismissed;



- f. That upon reading the judgment and receiving advice from Counsel on record, the Applicant wishes to appeal the decision;
 - g. That unfortunately time for lodging the appeal has already lapsed;
 - h. That leave of this Court is now required to lodge an appeal out of time;
 - i. That it is only fair and just that the orders sought be granted;
 - j. That the delay occasioned herein is not so inordinate or so great as to be inexcusable.
3. The Respondent opposes the application by a replying affidavit sworn by its Human Resource Manager, Meshack Okumu on 27th May 2024.
 4. Okumu terms the application as an afterthought and an abuse of the judicial process. He depones that the Applicant, being the Claimant in the suit, ought to have followed up on the status of the matter.
 5. He points out that while the Applicant claims to have followed up with the lower court registry, no evidence has been produced in the form of letters written and lodged in the e-filing system.
 6. Okumu further points out that the Applicant has not proffered an explanation as to why it took him close to four (4) months to log into the trial court's session to inquire about the status of his matter, adding that there is no evidence of such log-in on 24th April 2024.
 7. The Respondent asserts that it will suffer great prejudice if an extension of time for filing appeal is granted.
 8. The parties urged their respective positions by way of written submissions. Both parties relied on the decision in *Nicholas Kiptoo Arap Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR where the Supreme Court of Kenya stated the following:

“It is incumbent upon the applicant to explain the reasons for delay in making the application for extension of time and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant.”
 9. The Supreme Court went further to derive the following as guiding principles in the exercise of discretion to extend 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 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. Where there is a reasonable [cause] for the delay, the same should be expressed to the satisfaction of the court;
 - e. Whether there would be any prejudice suffered by the respondent, if 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.



10. The Applicant further relies on the case of Paul Musili Wambua v Attorney General & 2 others [2015] eKLR where the Court of Appeal affirmed that the decision to allow or deny extension of time for filing an appeal must be informed by reason and not whim or caprice. The Appellate Court went further to list the relevant considerations including; the period of delay, the reason for delay, the chances of success of the appeal, and the degree of prejudice to the respondent.
11. On its part, the Respondent cites the decision in Thuita Mwangi v Kenya Airways [2003] eKLR where the Court of Appeal reiterated its earlier decision in Mutiso v Mwangi [1997] KLR 630, 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 generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent if the application is granted.”
12. The law on this issue is fairly clear and I do not need to say more. What remains is for me to apply the foregoing principles to the case now before me. It is common cause that between the date of delivery of the judgment by the trial court and the filing of the present application, close to 4 months have passed by.
13. The Applicant’s explanation for this delay, which the Court considers significantly long, is that he was not aware that judgment had been delivered by the trial court. He then goes ahead to make a general statement about attempts to follow up the matter at the lower court registry but does not avail any evidence in support.
14. In the circumstances, I have reached the conclusion that the delay in this case has not been explained. Further, I take the view that to resuscitate an appeal after such a long period would be prejudicial to the Respondent.
15. For the foregoing reasons, the application dated 25th April 2024 is declined with an order that each party will bear their own costs.
16. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF DECEMBER 2024.

LINNET NDOLO

JUDGE

Appearance:

Mr. Kirimi for the Applicant

Ms. Aluoch for the Respondent

