



**PJ Dave Flora Limited v Wanjala (Civil Appeal 57 of 2018)
[2023] KEELRC 1805 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1805 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL APPEAL 57 OF 2018**

**L NDOLO, J
JULY 27, 2023**

BETWEEN

PJ DAVE FLORA LIMITED APPLICANT

AND

EVERLINE MAJUMA WANJALA RESPONDENT

RULING

1. By its Notice of Motion dated November 16, 2018, the Applicant seeks the following orders:
 - a) Leave to lodge an appeal from the judgment delivered on August 14, 2018 in Kajiado CMCC No 512 of 2016 out of time;
 - b) Stay of execution in Kajiado CMCC No 512 of 2016 pending the hearing and determination of the intended appeal;
 - c) That the annexed draft Memorandum of Appeal be deemed as duly filed upon payment of requisite court fees.
2. The Motion is supported by an affidavit sworn by the Applicant's Counsel, Kennedy Modi and is based on the following grounds:
 - a) That the judgment date was taken by the Respondent's Counsel in the absence of the Applicant's Counsel;
 - b) That the judgment notice was not served upon Counsel for the Applicant;
 - c) That the Court delivered judgment on August 14, 2018 in the absence of Counsel for the Applicant;
 - d) That the Applicant's Counsel learnt of the judgment on August 23, 2018;



- e) That Counsel for the Applicant undertook the process of verifying the judgment and updated their client's insurer on September 18, 2018;
 - f) That Counsel received instructions to appeal against the judgment on October 25, 2018;
 - g) That by the time the Applicant got back to its Counsel, the time allowed for filing the appeal had run out;
 - h) That the delay occasioned is not so inordinate or so great as to be inexcusable.
3. The Respondent does not oppose the application. Granting of leave to file an appeal out of time is a matter of judicial discretion and each case is to be examined on its own merit. The principles to be taken into account were set out in *First American Bank of Kenya Ltd v Gulab P Shab & 2 others* [2002] 1 EA 65 as follows:
- a) The explanation for the delay;
 - b) The merits of the contemplated action, whether the matter is an arguable one deserving a day in court or whether it is a frivolous one which would only result in the delay of the course of justice;
 - c) Whether or not the Respondent can adequately be compensated in costs for any prejudice that they may suffer as a result of exercise of discretion in favour of the Applicant.
4. In the present case the Applicant has explained the delay in filing the intended appeal and has undertaken to deposit the entire decretal sum either in court or in a joint interest earning account in the names of the parties' Advocates. Further, the appeal appears arguable and any prejudice caused to the Respondent is amenable to compensation by way of costs.
5. I therefore exercise discretion in favour of the Applicant and allow the plea for enlargement of time for filing the intended appeal.
6. There shall be stay of execution of the judgment of the trial court subject to the Applicant depositing the entire decretal sum in a joint interest earning account in the names of the parties' Advocates within the next thirty (30) days from the date of this ruling.
7. The Applicant is further directed to file and serve the Record of Appeal within the next sixty (60) days from the date of this ruling.
8. The costs of this application will follow the outcome of the appeal.
9. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JULY 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Modi for the Applicant

Mr. Kisia for the Respondent

