



**Obel v G4S Security Services Kenya Limited (Miscellaneous Application E061 of 2021) [2022] KEELRC 3924 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3924 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
MISCELLANEOUS APPLICATION E061 OF 2021  
CN BAARI, J  
SEPTEMBER 22, 2022**

**BETWEEN**

**LILIAN ANYANGO OBEL ..... APPLICANT**

**AND**

**G4S SECURITY SERVICES KENYA LIMITED ..... RESPONDENT**

**RULING**

1. The applicant's motion is dated September 6, 2021, and brought pursuant to order 42 rules 1, 2, 4 & 6, order 51 rule 1 of the Civil Procedure Rules and sections 1A, 1B, 63(e) and 79 of the Civil Procedure Act. The applicant seeks orders that:
  - i. Spent
  - ii. The honourable court be pleased to grant leave to the applicant to file her appeal out of time.
  - iii. The costs of the application be provided for.
2. The application is supported by grounds on the face thereof and the affidavit of Lilian Onyango Obel, the applicant herein.
3. Judgment in the matter was rendered on May 10, 2021, in favour of the respondent upholding the summary dismissal of the applicant. The applicant contends that the counsel handling her matter had proceeded on maternity leave at the time the judgment was delivered and that her absence occasioned the delay in lodging of the appeal.
4. The applicant further asserts that the instant application has been brought without undue delay and that it stands to succeed.
5. The respondent opposed the application *vide* grounds of opposition dated November 19, 2021 and filed before court on November 23, 2021.



6. The respondent contends that the applicant is undeserving of the equitable remedy of extension of time for reason that her explanation of the inordinate delay is not supported by any details or evidence. It is further argued that the court record indicates that the matter was at all times handled by Mr Obach.
7. Parties canvassed the application by way of written submissions and which submissions have been duly considered.

### **Determination**

8. The issue for determination is whether the applicant has satisfied the threshold for extension of time to file an appeal.
9. Section 79G of the *Civil Procedure Act*, provides as follows on the power of the court to extend time: -

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

10. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others*, SC application No 16 of 2014(2014) eKLR) the Supreme Court of Kenya held that extension of time is not a right of a party but an equitable remedy that is only available to a deserving party at the discretion of the court.
11. The judgment in Homa Bay Chief Magistrate’s ELRC cause No 94 of 2020, that the applicant seeks to appeal against was rendered on May 10, 2021, and the instant application filed on September 16, 2021. The reason given for the delay in filing of the appeal is that the counsel handling the matter had proceeded on maternity leave.
12. The principles that guide the court in allowing or declining to extend time are the length of the delay, the reason(s) for the delay, the possible chances of the appeal succeeding if the leave is granted, and the prejudice to the respondent if the leave is granted. (See *Leo Sila Mutiso V Hellen Wangari Mwangi* [199] 2 Ea 231)
13. The question for this court is whether the reason given for the delay is sufficient and whether the applicant is deserving of the court’s exercise of its discretionary power in her favour.
14. As correctly submitted by the respondent, the applicant’s explanation for the delay has not been supported by any evidence. The applicant has neither provided the name of the employee who reportedly proceeded on maternity leave nor the date when the said employee resumed duty.
15. The respondent’s assertion that the counsel currently on record for the applicant is the same one who handled the matter before the lower court has also not been rebutted. The Supreme Court in *County Executive of Kisumu v County Government of Kisumu & 8 others* [2017] eKLR emphasized that an applicant seeking to file an appeal out of time has the burden of laying a basis to the satisfaction of the court and proving that there was a reasonable explanation for the delay in filing the appeal.



16. The Court of Appeal in *Attorney General v Col (RTD) Richard Nchapi Leiyagu* [2017] eKLR in refusing to extend time to file an appeal where the applicant had alleged that the delay was occasioned by the advocate proceeding on maternity leave stated:

“As to the reason given that Ms Akuno went on maternity leave, I have reviewed the material, and there is nothing to support this averment. Additionally, Ms Akuno did not answer any affidavit accepting that the delay should be attributed to her, and not the defence forces.”

17. On the question of time, the delay in filing the appeal is about four (4) months. The questions of what amounts to an inordinate delay is a matter to be determined on the peculiar facts and circumstances of each case. In *Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers v Talai Secondary School* (2016) eKLR the court stated thus:

“Depending on the circumstance, a delay of even one day may be inordinate while a delay of 7 months may not be inordinate.”

18. Further in *John Cyprus Kamau & another v Amos Wafula Wafwafwa* [2014] eKLR, the court while dismissing an application to file an appeal out of time, held that a delay of 4 months was inordinate.

19. In *Daphne Parry v Murray Alexander Carson* (1963) EA 546, the court stated as follows on extension of time:

“Though the provision for extension of time requiring “sufficient reason” should receive a liberal construction, so as to advance substantial justice, when no negligence, nor inaction, nor want of *bona fides*, is imputed to the appellant, its interpretation must be in accordance with judicial principles, if the appellant had a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy; and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant.”

20. In conclusion, I find and hold that the applicant has not explained to the satisfaction of the court the reason for the delay in filing her appeal, and has thus not proved worthy of the exercise of the court’s discretionary remedy of extension of time.

21. The applicant’s motion dated September 6, 2021, is hereby dismissed.

22. I make no orders as to costs.

23. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2022.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

Ms. Otieno present for the Applicant

Mr. Sheikh h/b for Ms. Odiero for the Respondent

Ms. Christine Omollo-C/A

