



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**MISC. APPLICATION NO.E030 OF 2020**

**GODWIN BOY OKUMU.....APPLICANT**

**VERSUS**

**COALITION SECURITY SERVICES LIMITED...RESPONDENT**

**RULING**

The applicant filed Notice of Motion dated 8<sup>th</sup> September, 2020 under Rule 8 of the Employment and Labour Relations Court (Procedure) Rules, 2014,<sup>1</sup> section 79 of the Civil Procedure Act and Article 59 of the Constitution and seeking for orders that leave be granted to file the Memorandum of Appeal out of time against the judgement delivered by L.T Lewa and on the grounds that on 22<sup>nd</sup> May, 2020 judgement was delivered in CMEL No.653 of 2019 in favour of the respondent herein and the applicant aggrieved instructed advocates to lodge an appeal and who sent the memorandum of appeal to the electronic address provided for assessment in view of the COVID-19 pandemic measures. However the email mistakenly thought to be for assessment did not bring back a response forcing advocate to make several requests and following tracing back it was established that the email was not responded to.

The applicant is seeking leave to file Memorandum of Appeal out of time as the delay in doing so was occasioned by an honest delay and no prejudice shall be caused upon the respondent.

The application is supported by the annexed affidavit of Willis Wetaba Nanjendo advocate for the applicant and who avers that upon the judgement of the trial court on 22<sup>nd</sup> May, 2020 there were instructions to file an appeal and which was done

<sup>1</sup> Employment and Labour Relations Court (Procedure) Rules, 2016. though [elrcnaibopleadings@gmail.com](mailto:elrcnaibopleadings@gmail.com) for assessment but there was no response until 2<sup>nd</sup> July, 2020 when there was payment of the due fees but there was no response and efforts to have the registry correct the lapse did not bear fruits where time was lost and seek application be allowed so as to meet the ends of justice.

**Determination**

The applicant is seeking for leave to appeal out of time on the grounds that upon judgement in CMEL No.653 of 2019 on 22<sup>nd</sup> May, 2020 an appeal was lodged through the email address provided for the court, there was assessment of costs and which were paid but no response followed allocating a number or information that this was not processed until later when counsel learnt of the elapse and by then time to file appeal had lapsed.

Whereas under Rule 8 of the Employment and Labour Relations Court (Procedure) Rules, 2016 a party is allowed to file an appeal, there are no regulatory rules and section 79G of the Civil Procedure Rules applicable before the High Court with regard to lodging appeals apply. Reference to Article 59 of the Constitution, 2010 in this regard is irrelevant.

Section **75G of the Civil Procedure Act** provides that;

*79G. 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.*

As noted above, judgement was delivered in CMEL No.653 of 2019 on 22<sup>nd</sup> May, 2020. The Memorandum of Appeal was lodged with the court on 22<sup>nd</sup> June, 2020 save upon assessment of the payable court fees; there was back and forth communication on the appeal and leading to the filing of the instant application on 8<sup>th</sup> September, 2020.

No doubt, the 30 days fell in the Covid 19 pandemic period necessitating partial closure of courts and communications electronically and therefore the delay in filing the intended appeal was not inordinate. On whether the intended appeal has chances of success is not for this court to decide at this stage save that from the attached memorandum of appeal, the court is satisfied that the intended appeal is not frivolous on the face of it save the applicant will have an opportunity to satisfy the court on the merits of its appeal and the Respondents will have a chance to respond to the merits or demerits of the appeal once filed.

**Accordingly, application dated 8<sup>th</sup> September, 2020 is hereby allowed and the applicant granted leave of 21 days to file appeal out of time with regard to Chief Magistrates Court Milimani Commercial Court CMEL No.653 of 2019. Applicant shall bear own costs.**

Delivered in open court at Nairobi this 31<sup>st</sup> day of May, 2021.

**M. MBARU**

**JUDGE**

In the presence of:

Court Assistant: Okodoi

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