

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

MISCELLANEOUS NO. 42 OF 2020

GREAT WALL ENTERPRISES LIMITED.....APPLICANT

VERSUS

LYDIA MORAA OTERO.....RESPONDENT

RULING

1. The Applicant seeks through the Notice of Motion Application dated 12th March 2020 for leave to file an appeal out of time and a stay of execution of the decree and order of Hon. D. O. Mbeja Senior Resident Magistrate given on 31st January 2020. In the motion, the Applicant asserts there was an express notification of intent to appeal the decision but the instructions were not executed before the warrants were issued and attachment made. The Applicant avers that it has an arguable appeal which overwhelming chances of success. The Applicant's motion was opposed by the Respondent who asserts there exists no jurisdiction express or implied reposed in this Court by either statute or rules to extend time. The Respondent asserts that the prayers sought by the Applicant are not capable of grant for that reason and the paucity of explanation requisite for such orders.

2. The motion was disposed of by way of written submissions. However, as at the time of penning the Ruling, the submissions for the Applicant were not on record and none could be traced on the online portal of the Court (CTS System). The Respondent on her part submitted that the Employment and Labour Relations Court has no jurisdiction to extend time as there is no such provision whether in the Act or the Rules governing its procedure. The Respondent submitted that the Civil Procedure Rules permitting extension are not applicable to this Court for the reason that the Court has its own procedure. The Respondent was notified of the decision of the Subordinate Court but chose not to act within the time stipulated under the Rules to mount the intended appeal. As this Court does not have the jurisdiction to extend time, the motion by the Applicant is otiose. It is hereby dismissed with costs to the Respondent as it lacks merit.

It is so ordered.

Dated and delivered at Nairobi this 29th day of June 2021

Nzioki wa Makau

JUDGE