



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
CAUSE NO 20 OF 2017

KENGA CHEUPE.....CLAIMANT

VS

CHINA JIANGXI INTERNATIONAL KENYA LIMITED..RESPONDENT

RULING

1. On 27th September 2018, I delivered judgment in favour of the Claimant in the sum of Kshs. 170,625. The Respondent subsequently filed an application by way of Notice of Motion under certificate of urgency dated 12th November 2018, seeking extension of time to file a Notice of Appeal.

2. The matter was placed before my brother, **Rika J** who granted a temporary order of stay of execution of the aforesaid judgment.

3. The application is supported by the affidavit of the Respondent's Human Resource Officer, Michael Musembi and is based on the following grounds:

- a) That the Court delivered judgment in favour of the Claimant on 27th September 2018;
- b) That upon becoming well-versed with the judgment of the Court, the Respondent desires to appeal the decision in the Court of Appeal, which right of appeal shall be hindered if the Court does not grant the orders sought;
- c) That the delay was occasioned by the fact that the Respondent was reviewing and analyzing the judgment of the Court;
- d) That the Respondent believes it has sufficient grounds to be placed before the appellate court;
- e) That the Respondent is presently under threat of execution which will render the intended appeal nugatory;
- f) That it is in the interest of justice that the orders sought are granted.

4. The Claimant filed the following grounds of opposition on 21st December 2018:

- a) That the Respondent has not given any reasonable cause for its failure to file the Notice of Appeal within the prescribed time so as to warrant the discretion of the Court to extend time;
- b) That there has been undue delay in filing the application;
- c) That the application is merely a delaying tactic on the part of the Respondent whose intention is to deny the Claimant the fruits of the judgment.

5. The single issue for determination in this application is whether the Respondent has made out a case for extension of time for filing a Notice of Appeal. In the written submissions filed on behalf of the Claimant, reference was made to the decision in **Leo Sila Mutiso v Rose Hellen Wangari Mwangi (Civil Application No. Nai. 255 of 1997)** where it was held 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 in general the matters which the court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

6. In *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others [2014] eKLR* the Supreme Court gave the following underlying principles:

- a) *Extension of time is not a right. It is an equitable remedy which is only available to a deserving party at the discretion of the Court;*
- b) *A party who seeks for 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) *Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;*
- e) *Whether there will be any prejudice suffered by the respondents if the extension is granted;*
- f) *Whether the application has been brought without undue delay; and*
- g) *Whether in certain cases, like in election petitions, public interest should be a consideration for extending time.*

7. In the instant case, the Court delivered judgment on 27th September 2018 and the Respondent filed its application on 15th November 2018. Apart from a general statement that the Respondent was reviewing and analyzing the judgment, the Respondent did not give any reason for failure to file the Notice of Appeal within the prescribed time.

8. A party seeking the exercise of discretion in its favour must give a cogent reason for the time lapse. The Court should not be left guessing as to what the reason for delay may have been. This is what the Respondent is inviting the Court to do and I respectfully decline.

9. For this reason alone, the Respondent's application dated 12th November 2018 and filed in court on 15th November 2018 is dismissed with costs to the Claimant. The interim orders granted on 29th November 2018 are vacated.

10. Orders accordingly.

DATED SIGNED AND DELIVERED AT MALINDI THIS 14TH DAY OF FEBRUARY 2019

LINNET NDOLO

JUDGE

Appearance:

Mrs. Kariuki for the Claimant

Mr. Adala for the Respondent