

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 436 OF 2017

ELIZABETH MUTHONI MURIITHI.....CLAIMANT/RESPONDENT

VERSUS

1. JOSEPH MUCHINA MURIUKI

2. MARY WAIRIMU MUCHINA.....RESPONDENTS/APPLICANTS

RULING

1. The Respondents/Applicants' notice of motion application seeks leave to file an appeal out of time. The decision that the intended appeal is sought was given on 8th April 2019. The grounds are that no leave was sought when the judgment was delivered and that the Respondents wish to appeal against the decision. The Respondents/Applicants' motion is supported by the affidavit of Mary Wairimu Muchina one of the co-applicants which is simply to the effect that the Respondents are dissatisfied with the decision of the court.

2. The application to appeal out of time was sketchy at best as the Applicants only attached an intended notice of appeal. In the case of **Thuita Mwangi v Kenya Airways Ltd [2003] eKLR** the Court of Appeal held citing the case of **Leo Sila Mutiso v Rose Hellen Wangari Mwangi, (Civil Application No. Nai 255 of 1997) (unreported)**, the Court expressed itself thus:

“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 this 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”.

3. As seen above, it is now well settled in law that the decision whether or not to extend the time for preferring an appeal is discretionary. It is also well settled that in general, the matters which a court has to take into account in deciding whether or not to grant an extension of time are: firstly, the length of the delay; secondly, the reason for the delay; thirdly, the chances of the intended appeal succeeding if the application is granted and, fourthly, but not least, the degree of prejudice to the respondent if the application is granted. In the matter before me there is no draft memorandum of appeal presented and there is no basis to determine if there is any chance for the appeal intended to be filed ever succeeding. In the premises there is no basis to grant the application before me as it is hopelessly incompetent and unfit for grant. Application is dismissed with costs.

It is so ordered.

Dated and delivered at Nyeri this 3rd day of July 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar