



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

PETITION NO. 54 OF 2014

PETER LICHUNGU.....CLAIMANT

VERSUS

KENYA POWER & LIGHTING COMPANY.....RESPONDENT

RULING

1. By a notice of motion dated 16th April, 2018 the petitioner seeks leave of the court to file an appeal out of time. The intended appeal is in respect of the Ruling of this court delivered on 23rd October, 2015.
2. The application was premised on the grounds among others that the notice of appeal was filed on 10th November, 2015 and that the petitioner simultaneously applied for certified copies of the Ruling and Proceedings on 11th November, 2015.
3. According to the petitioner the court did not formally communicate to the law firm as was the norm, that the certified copies of ruling and proceedings were ready for collection. Counsel stated that it became known to them that the proceedings were ready when the petitioner brought to his attention that they were in the file. According to the petitioner's counsel, the delay was not inordinate and was partly brought about by the respondent filing taxation issue on the same matter.
4. The respondent opposed the application and filed grounds of objection dated 24th September, 2018. The respondent contended among others that the delay in filing the record of appeal was deliberate and extremely inordinate and that the application offended the peremptory principle of law that litigation must come to an end.
5. Where by law and rules of this court time is set for taking any step in the prosecution or disposal of a suit, it is desirable that those timelines be observed. Non observance of the timelines usually occasion inconvenience and at times uncalled for costs to parties affected. In merited cases however and where the law or rules allow, time may be extended for good cause shown. But such extension is discretionary. To exercise the discretion the applicant must demonstrate that there existed reasonable hindrance that necessitated the failure to meet the timelines set by the law or rules.
6. The applicant herein in support of the application has stated that he duly applied for certified copies of ruling and proceedings on 11th November, 2015 and that the court did not formally communicate to his advocate as was the norm that the certified copies or ruling and proceedings were ready and that his advocate only knew about readiness of certified copy of ruling and proceedings when the applicant informed them. Counsel however did not disclose when his client brought this to his attention.
7. Secondly, the applicant states that the act of respondent filing a taxation issue in the matter also contributed to failure to file the appeal within time. These reasons are in the court's view non-meritorious. It is the responsibility of a party desirous of filing an appeal to diligently follow up and ensure any of the prerequisite steps for filing an appeal are met. A party cannot request for certified copies of proceedings and go to sleep on his intended appeal. The almost three years delay is inordinate and in any event the applicant has not provided any reasonable excuse to make the court exercise its discretion in its favour. The excuse that the respondent filed a taxation matter in the same file is not credible at all since the applicant was a party in those taxation proceedings and even filed submissions.
8. The other issue which the parties never raised but it important is the issue of the jurisdiction of the court to extend time to file a record of appeal. The rules of this court and the civil procedure rules generally does not provide for extension of time to file the notice of appeal and record of appeal once time has lapsed.
9. Under rule 75 of the Court of Appeal rules a party desirous of filing an appeal shall give notice in writing which shall be lodged in duplicate with the Registrar of the superior court. This rule too does not provide for application for extension of time to file a notice of appeal in the superior court. Section 4 of the Appellate Jurisdiction Act however permits extension of time limited by the rules, or by any

decision of the court or superior court. It would therefore mean that once time for filing either the notice of appeal or record of appeal has lapsed the proper court before whom an application for extension of time should be made is the court to which the appeal is to be preferred in this case the Court of Appeal.

10. The application is therefore found unmerited by reason of unreasonable delay and second, for want of jurisdiction.

11. The same is hereby dismissed with no order as to costs.

12. It is so ordered.

Dated at Nairobi this 7th day of December, 2018

Abuodha Jorum Nelson

Judge

Delivered this 7th day of December, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent