



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

MISC. APPLICATION NO. 230 OF 2015

(Before Hon. Justice Mathews N. Nduma)

WYCLIFFE CHITAYI MUHALYAAPPLICANT

VERSUS

DOROTHY AWITI OMBOTO T/A

DAO & ASSOCIATES ADVOCATES.....1ST RESPONDENT

WILFRIDA A. OSODO T/A

WILFRIDA A. OSODO ADVOCATES2ND RESPONDENT

RULING

1. In this matter the Applicant purports to have filed an application to the Court of Appeal in Kisumu for leave to file a Notice of Appeal and Memorandum of Appeal out of time in Kisumu Court of Appeal Civil Application no. 98 of 2017.
2. The intended Appeal is against a ruling by the Labour Court delivered on 22nd September, 2017 in which the court upheld a Taxation by the Deputy Registrar in Kisumu ELRC Case No.83 of 2013 delivered on 27th July, 2016.
3. In terms of paragraphs 11(3) and (4) of the Advocates Remuneration Order –

“(3) any person aggrieved by the decision of the Judge upon any objection referred to such Judge under sub-paragraph (2) may, with the leave of the Judge but not otherwise appeal to the Court of Appeal.”
4. An application to amend the Notice of Motion so as to include a prayer to seek leave to appeal and extension of time in which to file an appeal was made on 4th May, 2018. The amendment was granted. The Applicant states that failure to seek leave before this court was an inadvertent mistake on the part of the assisting counsel and pupil who assisted the 1st Respondent in preparing the pleadings.
5. This leave to note an appeal has been sought more than 8 months from the date of the ruling of the court and two years from the date the taxing master concluded the taxation.
6. This is indeed inordinate delay and counsel cannot be heard to blame his pupil for a mistake in erroneously noting an application for leave to file an appeal before the court of appeal.
7. The Claimant is entitled to expedient delivery of justice and enjoy the fruits of his judgment.
8. The application lacks merit and is dismissed with costs to the Claimant/Respondent.

Ruling Dated, Signed and delivered this 6TH day of DECEMBER, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Nyamwea for Respondent/Applicant Olel, Onyango,

M/s. Omolo for Claimant/Respondent

Chrispo – Court Clerk