



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1253 OF 2015

THE STANDARD LIMITED..... CLAIMANT

VERSUS

MOSES ANEMBA..... RESPONDENT

Mr Echesa for Respondent/Applicant

Mr Onyango for Claimant/Respondent

RULING

1. The application arises from a judgment of the Resident Magistrate court entered on 23rd July 2015. The decretal sum was fully paid by the appellants on 5th March 2015. The counsel for the Appellant did not appear at the hearing of the suit.
2. The Appellant has already filed High Court Civil Appeal No 145 of 2015 out of time without leave of the Court. The Appeal was subsequently transferred to this court and registered as Cause No 1253 of 2015.
3. This is an error that ought to be rectified since this is an appeal and not a fresh suit. The Appellant vide application dated 1st July 2015 seeks the court to admit the appeal out of time. The application was filed on 6th July 2015.
4. The application is opposed vide a replying affidavit of the claimant/ respondent deponed to on 9th July 2015 and filed on 10th July 2015.
5. The issues for determination are as follows;
 - i. Whether there has been inordinate delay in filing the application.
 - ii. Whether the satisfaction of the judgment and decree has rendered the appeal spent.
 - iii. Whether the applicant discloses an arguable appeal.

Issues i & ii

6. The Supreme Court in the case of **Nicholas Kiptoo Arap Korir Salat –Vs- IEBC & 7 Others, Supreme Court Application No 16 of 2014** laid down the following as the underlying principles that a court should consider in the exercise of discretion to extend time:-
 - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.

- ii. The party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
 - iii. As to whether the court should exercise the discretion to extend time is a consideration to be made on a case by case basis.
 - iv. Whether there is a reasonable reason for the delay should be explained to the satisfaction of the court.
 - v. Whether there will be any prejudice to be suffered by the respondents if the extension is granted.
 - vi. The application should have been brought without undue delay and;
 - vii. In certain cases like election petitions public interest should be considered for extending time.
7. In the present case an appeal was filed on 8th April 2015 after the judgment was delivered on 23rd January 2015. The appeal ought to have been filed within 30 days from the date of delivery of the judgment i.e on or before 23rd February 2015. This is in terms of Section 79 G of the Civil Procedure Rules.
 8. The application for leave to file the appeal was filed on 6th July 2015 almost seven (7) months from the date judgment was delivered and more than three (3) months from the date the appeal was filed.
 9. Section 79 G of the Civil Procedure Act.

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order, provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time”.

10. In **Masoud M.Y Noorani -Vs- General Tyres Sales Ltd (2004) eKLR**, Kasango J cited with approval the case of **Gerald M. Limelane –Vs- Joseph Kangangi (2009) eKLR** where the court stated:-

“My understanding of the proviso of section 79 G is that an applicant seeking “an appeal to be admitted out of time” must in effect file such an appeal and at the same time seek leave of court to have an appeal admitted out of the statutory period of time. The provision does not mean that an intending appellant first seeks the court’s permission to admit a non-existent appeal out of the stipulated period. To do so would actually be an abuse of the courts process under section 79 B”,

11. It is not in dispute the appeal was filed without leave on 8th April 2015 and then three (3) months later on 6th July 2015 this application seeking leave to admit the appeal out of time was filed.
12. The applicant has not provided any reasonable explanation to the satisfaction of the court the delay in filing the application for admission of the appeal about seven (7) months from the date of judgment and more than three months from the date the appeal was filed without leave
13. This in the court’s view amounts to inordinate delay without reasonable explanation by the applicant.
14. In arriving at this conclusion the court has considered that the claimant/respondent was fully paid the decretal sum on 5th March 2015 before the appeal was filed and he stands to suffer prejudice if the extension of time to file the appeal is granted at this time.
15. It is the court’s considered view that the applicant is not deserving of the discretion of the court to admit the appeal out of time taking all the circumstances of this case into account.
16. It is not necessary to consider issue No. (iii) in view of the court’s finding in issues (i) and (ii) above.
17. The application is therefore, dismissed with costs to the claimant/respondent.

Dated and delivered at Nairobi this 18th day of March 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE