



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU**

**MISC. CIVIL APPLICATION NO. 11 OF 2016**

*(BEFORE HON. LADY JUSTICE MAUREEN ONYANGO)*

**WILFRED OLOOKO MUROKA ..... APPLICANT**

**-VERSUS-**

**NZOIA SUGAR COMPANY LIMITED ..... RESPONDENT**

**RULING**

The application before me for determination is filed by Wilfred Olooko Muroka seeking leave to file appeal out of time and the annexed Memorandum of Appeal be deemed to have been filed in time. His reasons for not filing appeal within the prescribed period is that the file was missing from the Court Registry at Bungoma.

The application is supported by the applicant's affidavit sworn on 20th June, 2016. He has annexed to his application a copy of the Memorandum of Appeal, his written submissions in respect of the appeal and decree among other documents.

The Respondent opposes the application and filed a replying affidavit of Rita Mukhongo, the legal officer of the Respondent. The main ground of opposition is that there is inordinate delay in filing appeal. It is the Respondent's position that the delay has not been explained and that the lower court file has not been missing as alleged by the applicant, that the applicant has not shown that he applied for certified copies of proceedings and judgement.

The application was heard on 20st July, 2016. The Applicant appeared in person while the Respondent was represented by Learned Counsel Mr. Murunga instructed by MSSRS J. O. Makali & Company Advocates.

**Analysis and Determination**

The only issue for determination is whether the applicant ought to be granted leave to file appeal out of time.

The Principles for grant of leave to file appeal out of time were articulated by the Supreme Court in the case of **Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 others** [2014]eKLR where the court stated as follows -

**“This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:**

**1. 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;**

**2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court**

**3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;**

**4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;**

**5. Whether there will be any prejudice suffered by the respondents if the extension is granted;**

**6. Whether the application has been brought without undue delay; and**

**7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”**

In the present application the applicant acts in person. On record there is a hand written letter that he wrote on 16th November, 2015 to the Chief Magistrate where he explicitly states he requires the certified true copies of Judgement for purpose of appeal to this court. He applied for stay of execution on 10th August, 2015 but the application was dismissed.

The Respondent's only grounds of objection to the present application are the delay in filing appeal has not been explained and that there is no evidence that the applicant applied for proceedings.

I have considered the application, the grounds in support thereof and the submissions of the parties in court. I have taken into account the fact that the applicant had the services of counsel only up to the time of Judgement and has been acting in person since then. He may therefore not be conversant with time lines for filing appeal or technicalities of applying for certified copies of both proceedings and judgement. His letter dated 16th November 2015, which was written on the same date that the ruling on his application for stay of execution was delivered, only seeks copies of Judgement. The letter however expressly states he requires the certified copy of judgement for appeal to this court. There is no evidence that the file has been available in the registry as stated in the Respondent's replying affidavit.

As was stated by the Court of Appeal in the **Nick Salat** (supra) case, Courts have unfettered jurisdiction to extend time and that each case should be considered on its own merit. In this application the Respondent has not stated that it will be prejudiced in any way if the application is granted. I am satisfied that the applicant expressed his intention to appeal on the very date his application for stay of execution was delivered through his letter dated 16th November, 2015. I am also satisfied that the applicant has sufficiently explained the delay in filing this application being that the court file was missing.

For the foregoing reasons. I find that it is in the interest of justice to allow the applicant file his appeal out of time. I therefore allow the application and grant the applicant leave to file his Memorandum of Appeal within 14 days from the date of this ruling.

There shall be no orders for costs of this application.

**Dated and signed and delivered this 6th day of October, 2016**

**MAUREEN ONYANGO**

**JUDGE**