



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NUMBER 626 OF 2013**

**JAMES HEATHER-HAYES..... CLAIMANT**

**VERSUS**

**AFRICAN MEDICAL AND RESEARCH FOUNDATION (AMREF).....RESPONDENT**

**RULING**

1. The applicant in this matter seeks extension of time to file a Notice of Appeal against ruling and orders of Hon. Justice Marete delivered on 18<sup>th</sup> June, 2014.
2. The application is brought on the ground that judgment was delivered in the absence of Counsel for both parties and on a date not specified to them. According to the applicant, there was genuine confusion as to whether and when the ruling sought to be appealed from was delivered leading to the expiry of the mandatory period required for the filing of the Notice of Appeal.
3. The applicant further stated that there was no undue delay in presenting the application and that no prejudice would be suffered by the respondent if the orders sought were granted.
4. The respondent opposed the application on the main that the Court record set out accurately when the ruling was delivered and that the claimant could not alter or vary the Court record. The respondent further averred that the application was based on unsubstantiated, false and contradicting statements.
5. This Court will not delve into the merits and demerits of Hon. Justice Marete's ruling. All the applicant needs to satisfy the Court at this stage is whether the delay in filing the application has been reasonably explained and that the application has not been brought inordinately late.
6. On 17<sup>th</sup> March, 2014, Justice Marete ordered that the ruling herein would be delivered on 18<sup>th</sup> June, 2014 at 2.30p.m.
7. On the appointed date, only the Counsel for the respondent was recorded to have appeared. The ruling was however read despite the absence of Counsel for the applicant.
8. In the affidavit in support of the present application, Counsel depones that he was available on the material date, to wit 18<sup>th</sup> June, 2014 but was informed by the Court Clerk that the ruling was not ready. He consequently wrote a letter on 19<sup>th</sup> June, 2014 seeking to know when the ruling would be delivered but came to learn that the ruling was delivered as scheduled on 18<sup>th</sup> June, 2014 at 2.30p.m.
9. The applicant, for what is worth intend to appeal against the ruling of the Court. There may have been confusion or not when the ruling was actually delivered however allowing an applicant leave to file

an appeal out of time will not occasion the respondent any prejudice which cannot be compensated by way of costs.

10. This application may be regarded late by the respondent however it does not qualify to be termed as inordinately late.

11. In the circumstances I will allow the application to the extent that the applicant shall file Notice of Appeal within 7 days of this ruling and a record of Appeal within 60 days of this ruling.

12. The respondent shall have costs of the application.

Dated at Nairobi this 7<sup>th</sup> day of May 2015

Abuodha J. N.

Judge

Delivered this 7<sup>th</sup> day of May 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge