



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO 1742 OF 2011

MICHAEL NDUNGU CLAIMANT

VS

HIGHER EDUCATION LOANS

MANAGEMENT BOARD RESPONDENT

Mr Matwele for the Plaintiff

M/S Boyo for the Respondent

RULING

1. An Application dated 26th March 2015 seeks an order for reinstatement of the Claimant's Application dated 22nd August 2013.
2. The Application dated August 2013, was brought to allow the Claimant leave to file an appeal out of time. The Application was dismissed on 8th June 2014, because the Counsel for the Applicant failed to attend Court on the day.
3. The Application is based on the reason set out on the face of the Notice of Motion to wit;

“That the Advocate on record at the time was overwhelmed with matters in the office as one of the associates was unwell and had lost his father therefore the burden of all office files had befallen on him.”

4. The Application is opposed vide a replying affidavit sworn by M/S Mary Boyo, Advocate for the Respondent.
5. The Advocate depones that this Application has been brought eight (8) months since the order dismissing the Application was made. That the Applicant is guilty of laches and the Court ought not exercise its discretion in favour of the Applicant.
6. Furthermore, it is submitted for the Respondent that there is no justifiable reason advanced by the Applicant for the failure to attend Court on 18th June 2014.

Determination

7. The Court agrees with the Respondent that eight (8) months delay is inordinate in the circumstances of this case. Further, the reason advanced by the Applicant for failure to attend Court on 18th June 2014, is not clear and the same is unreasonable.

8. In the case of **Mayega Chagara V. Thai Plywood (Kenya) Limited [2015] eKLR**, Justice Radido held that a delay of six (6) months in bringing an application for review after judgment was inordinate. I agree with the Learned Judge and hold that eight (8) months delay in bringing in an application for reinstatement of an application from the date of its dismissal constitutes inordinate delay.
9. The Application is dismissed with costs to the Respondent.

Dated and Delivered at Nairobi this 25th day of September, 2015

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE