



Haki Na Sheria Initiative v Inspector General of Police, Cabinet Secretary for Internal Security & Attorney General; Kenya National Human Rights and Equality Commission(Interested Party) (Civil Application 19 of 2020) [2021] KESC 55 (KLR) (Civ) (24 March 2021) (Ruling)

Haki Na Sheria Initiative v Inspector General of Police & 2 others; Kenya National Human Rights and Equality Commission(Interested Party)

Neutral citation: [2021] KESC 55 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA**

CIVIL

CIVIL APPLICATION 19 OF 2020

**PM MWILU, AG.CJ & AG. P, MK IBRAHIM, SC
WANJALA, NS NDUNGU & I LENAOLA, SCJJ**

MARCH 24, 2021

BETWEEN

HAKI NA SHERIA INITIATIVE APPLICANT

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

CABINET SECRETARY FOR INTERNAL SECURITY 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

**KENYA NATIONAL HUMAN RIGHTS AND EQUALITY
COMMISSION INTERESTED PARTY**

(Being an application for extension of time to lodge an appeal against the Judgment of the Court of Appeal at Nairobi (W. Karanja, Sichale & J Mohammed, JJ.A) dated 19th day of June 2020, in Civil Appeal No. 261 of 2018)

The Supreme Court had the discretion to extend time to file a petition of appeal out of time

The applicant sought for extension of time to file an appeal out time. The court noted that under rule 15(b) of the Supreme Court Rules, 2020, the court would on its discretion extend time for any action under the Rules. The court further found that the applicant timeously lodged its notice of appeal and also provided sufficient explanation for the delay in filing of the petition of appeal.



Reported by Chelimo Eunice

Civil Practice & Procedure – appeals – appeals to the Supreme Court - extension of time for filing appeals - whether the Supreme Court had the discretion to extend time to file a petition of appeal out of time –where it was contended that the delay was occasioned by technical issues and failure of the e-filing system of the Supreme Court to upload the petition of appeal - whether the applicant had provided sufficient explanation to warrant the extension of time to file the appeal - Supreme Court Rules, 2020, rule 15(b).

Brief facts

The applicant sought for extension of time to file an appeal out time. It contended that the delay was occasioned by technical issues and failure of the e-filing system of the Supreme Court to upload the petition of appeal in spite of numerous attempts to do so. The respondent did not file any response or submissions with regard to the application.

Issues

- i. Whether the Supreme Court could extend time to file a petition of appeal out of time.
- ii. Whether the applicant had laid satisfactory basis to warrant extension of time to file the appeal.

Held

1. Under rule 15(b) of the Supreme Court Rules, 2020 (Rules), the Supreme Court would on its discretion extend time for any action under the Rules. Extension of time was not a right of a party, but would be considered on a case by case basis with the onus on the applicant seeking extension to lay the basis and give proper explanation to the satisfaction of the court on the reason for delay.
2. The applicant timeously lodged its notice of appeal and also provided sufficient explanation for the delay in filing of the petition of appeal.

Application allowed, with the applicant bearing the costs of the application.

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the Notice of Motion application by the Applicants dated 5th August 2020, and filed on 6th August 2020, which application is brought pursuant to the provisions of Article 159 of the Constitution of Kenya, Section 21 (2) and 24 of the Supreme Court Act, and Rule 53 of the Supreme Court Rules, 2012 (now revoked) in which the Applicants seek extension of time to file an appeal out time; and
2. Upon perusing the supporting affidavit of Counsel for the Applicant, Jibril Noor, sworn on 5th of August 2020; and
3. Upon considering the written submissions by the Applicant dated 5th August 2020, and filed on the 6th of August 2020 wherein the Applicant contends that the delay in filing the Petition of Appeal was occasioned by technical issues and failure of the e-filing system of the Court to upload the Petition of Appeal in spite of numerous attempts to do so; and
4. NOTING that the Respondent did not file any response or submissions with regard to the application despite directions issued by the Deputy Registrar on the 4th of September 2020; and



5. HAVING considered the application and the submissions filed by the Petitioner/Applicant, we note that under Rule 15(b) of this Court's Rules, 2020, the Court may, on its discretion extend time for any action under the Rules. As pleaded by the Applicant, this Court has already set the guiding principles for extension of time in the case of Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others, Supreme Court Application No 16 of 2014, [2014] eKLR, where the Court emphasized that extension of time is not a right of a party, but would be considered on a case by case basis with the onus on the Applicant seeking extension to lay the basis and give proper explanation to the satisfaction of the Court, the reason for delay; and
6. Upon noting that in this case, the Applicant, having timeously lodged their notice of appeal has also provided sufficient explanation for the delay in filing of the Petition of Appeal; and
7. In the circumstances, we allow this application and make the following Orders;
 - a. The Application dated 5th August 2020, and filed on the 6th of August 2020 is hereby allowed.
 - b. The Applicant shall bear the costs of this Application.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MARCH, 2021.

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P. M. MWILU

Ag. CHIEF JUSTICE & Ag. PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

