



REPUBLIC OF KENYA



KENYA LAW
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**Attorney General v Zinj Limited (Petition 1 of 2020)
[2020] KESC 42 (KLR) (Civ) (4 August 2020) (Ruling)**

Attorney General v Zinj Limited [2020] eKLR

Neutral citation: [2020] KESC 42 (KLR)

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

CIVIL

PETITION 1 OF 2020

**DK MARAGA, CJ, PM MWILU, DCJ & V-P, MK IBRAHIM,
SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ**

AUGUST 4, 2020

BETWEEN

HONOURABLE ATTORNEY GENERAL PETITIONER

AND

ZINJ LIMITED RESPONDENT

(Being an application for enlargement of time to file a supplementary record in Court of Appeal at Malindi (Visram, Karanja & Musinga JJA) in Civil Appeal No. 56 of 2018)

Supreme Court had jurisdiction to consider and allow an application for leave to extend time

The petitioner sought enlargement of time to file a supplementary record of appeal arguing, among other points, that the court had jurisdiction to consider and allow an application for leave to extend time.

Reported by Chelimo Eunice

Jurisdiction – jurisdiction of the Supreme Court – jurisdiction of the Supreme Court in an application for extension of time - whether the Supreme Court had jurisdiction to consider and allow an application for leave to extend time for the filing of a supplementary record of appeal - when could the Supreme Court allow an application for extension of time - Supreme Court Act, (No.7 of 2011), section 21(3); Supreme Court Rules, 2012, rule 53.

Brief facts

The petitioner sought enlargement of time to file a supplementary record of appeal arguing, among other arguments, that the respondent would not be prejudiced in any manner and that there was no undue delay on his part in obtaining the decree and certified copies of the proceedings from the Court of Appeal and that it would be in the interest of justice for the court to extend the time so as to enable the court determine the real question in dispute.



The respondent contemporaneously filed its replying affidavit in opposition to the petitioner's application with his application seeking to strike out and have withdrawn the petitioner's record of appeal dated January 24, 2020 on various grounds, which included the contention that the petitioner having approached the court for extension of time within which to file his petition, and upon being granted the extension failed to comply with the orders, and seeking a further extension was an abuse of the courts processes.

Issues

- i. Whether the Supreme Court had jurisdiction to consider and allow an application for leave to extend time.
- ii. When could the Supreme Court allow an application for extension of time.

Held

1. The Supreme Court had the jurisdiction to consider and allow an application for leave to extend time as provided for under section 21(3) of the Supreme Court Act and rule 53 of the Supreme Court Rules, 2012.
2. The application by the petitioner satisfied the principles on extension of time because the petitioner had given reasonable and cogent reasons for the delay in filing the supplementary record of appeal. Further, the record, being certified copies of the Court of Appeal record was not a contested record and its filing would cause no prejudice to the respondent.
3. The court exercised discretion and granted the petitioner's application. Conversely, the respondent's application was found to have no merit once the former had been allowed.

Petitioner's application allowed, respondent's application dismissed.

Orders

- i. *The notice of motion by the petitioner dated February 3, 2020 and filed on February 6, 2020 allowed.*
- ii. *The supplementary record of appeal was deemed as filed.*
- iii. *The application by the respondent dated May 26, 2020 and filed on June 3, 2020 dismissed.*
- iv. *Each party ordered to bear its own costs in both applications.*

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. UPON reading the Notice of Motion by the Petitioner dated 3rd February 2020 and filed on 6th February 2020 which application is brought pursuant to the provisions of Articles 159(2)(d) & 163(4) (a) of the Constitution, Sections 3, 21(2) & 3 of the Supreme Court Act, 2012 and Rules 23, 26, 33(6) & (7), 34 and 55 of the Supreme Court Rules, 2012 and in which the Petitioner seeks enlargement of time to file its Supplementary Record of Appeal; and
2. UPON reading the supporting affidavit of Ruth Chepkembo Lutta, and those of Dr. Ibrahim M. Mohamed, the Principal Secretary Ministry of Defence, and Ya'Qub Omar in response to the Respondent's application all dated 26th May 2020 and filed on 3rd June 2020 respectively in which the Petitioner states that this Court had, on 15th January 2020, allowed its application dated 24th January 2019 which extended time within which to file his Petition and Record of Appeal and FURTHER, that he filed and served the Respondent with the Petition and Record of Appeal on 22nd January 2020, which was within the prescribed time; and



3. Noting that with regards to obtaining certified copies of the order and proceedings from the Court of Appeal in Civil Appeal No. 56 of 2018, the Petitioner submits that on 5th April 2019, he had endorsed a draft order of the Court of Appeal and returned the same to the Respondent's advocates for preparation of the final order in accordance with Rule 34(2) of the Court of Appeal Rules, 2010; and
4. Further Noting the submission by the Petitioner that the Respondent would not be prejudiced in any manner and that there was no undue delay on the part of the Petitioner to obtain the decree and certified copies of the proceedings from the Court of Appeal and that it would be in the interest of justice for this Court to extend the time for filing the Supplementary Record of Appeal so as to enable this Court determine the real question in dispute; and
5. That in the further submissions dated and filed on 5th June 2020, the Petitioner submits that on 6th February 2020, the Deputy Registrar issued directions in Court, directing the Petitioner to file its Supplementary Record of Appeal within 20 days from the date of the directions and Further submitted that the Supplementary Record of Appeal as well as the Petitioner's submissions in the Petition were filed on 20th February 2020 and that the record is now complete; and
6. Noting that the Respondent on 3rd June 2020 contemporaneously filed its Replying Affidavit in opposition to the Petitioner's application with his application predicated on Rules 23(1), 33 and 37 of the Supreme Court Rules seeking to strike out and have withdrawn the Petitioner's Record of Appeal dated 24th January 2020 on the grounds that;
 - (a) The Petitioner having approached this Court for extension of time within which to file his Petition, and upon being granted the extension failed to comply with the orders, and seeking a further extension is an abuse of the Courts processes;
 - (b) That Petitioner failed to follow the laid down procedures of this Court and completely ignored its orders;
 - (c) The actions of the Petitioner are prejudicial, biased and malicious and aimed at denying the Respondent the fruits of its Judgment delivered by the Court of Appeal in Civil Appeal No. 56 of 2018; and
 - (d) That the Notice of Appeal and Record of Appeal are prejudicial, unjust and unfair to the Respondent; and
7. Further Noting that the above grounds are replicated in both the Respondent's affidavit in support of the application and the Replying Affidavit of Mohammed Maadhbuti sworn on 26th May 2020, and are further reiterated in the submissions filed on 26th May 2020 both in response to the Petitioner's application dated 3rd February 2020 and filed on 6th February 2020; and
8. Having considered the two concomitant applications, we opine as follows;
 - (a) This Court has the jurisdiction to consider and allow an application for leave to extend time as expressed in *Anuar Loitiptip v. Independent Electoral & Boundaries Commission SC Petition (App.) No. 18 of 2018*; [2018] eKLR and as provided for under Section 21(3) of the Supreme Court Act and Rule 53 of the Supreme Court Rules, 2012;
 - (b) That the application by the Petitioner dated 3rd February 2020 and filed on 6th February 2020 satisfies the principles set out by this Court in *Hamida Yaro Shek Nuri v. Faith Tumaini Kombe & 2 others SC Petition (App.) No. 38 of 2018*; [2019] eKLR, *Hassan Nyanje Charo v. Khatib Mwashetani & 3 others SC Application No. 15 of 2014*; [2014] eKLR and *Nicholas*



Kiptoo Arap Korir Salat v Independent Electoral & Boundaries Commission & 7 others SC Application No. 16 of 2014; [2014] eKLR on extension of time because;

- i) the Petitioner has given reasonable and cogent reasons for the delay in filing the Supplementary Record of Appeal.
- ii) the said record, being certified copies of the Court of Appeal record in Civil Appeal No.56 of 2018 is not a contested record and its filing will cause no prejudice to the Respondent.

9. In The Circumstances,we exercise discretion and grant the Petitioner’s Notice of Motion dated 3rd February 2020. Conversely, we hereby disallow the Respondent’s application dated 26th May 2020 as it would have no merit once the former has been allowed.

10. In the event, we now make Orders as follows;

- (a) The Notice of Motion by the Petitioner dated 3rd February 2020 and filed on 6th February 2020 is hereby allowed.
- (b) The Supplementary Record of Appeal is deemed as filed as the Petitioner submitted that it had already filed certified copies of proceedings from the Court of Appeal in Civil Appeal No. 56 of 2018.
- (c) The Application by the Respondent dated 26th May 2020 and filed on 3rd June 2020 is hereby dismissed; and
- (d) Each party shall bear its own costs in both Applications.

11. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF AUGUST, 2020.

D. K. MARAGA P. M. MWILU

**CHIEF JUSTICE & PRESIDENT DEPUTY CHIEF JUSTICE & VICE
OF THE SUPREME COURT OF THE SUPREME COURT**

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M. K. IBRAHIM S. C. WANJALA

JUSTICE OF THE SUPREME COURT JUSTICE OF THE SUPREME COURT

*

NJOKI NDUNGU I. LENAOLA

JUSTICE OF THE SUPREME COURT JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

