



Geo Chem Middle East v Kenya Bureau of Standards (Petition 47 of 2019) [2020] KESC 12 (KLR) (23 September 2020) (Ruling)

GEO Chem Middle East v Kenya Bureau of Standards [2020] eKLR

Neutral citation: [2020] KESC 12 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION 47 OF 2019
PM MWILU, DCJ & V-P, MK IBRAHIM, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ
SEPTEMBER 23, 2020**

BETWEEN

GEO CHEM MIDDLE EAST APPELLANT

AND

KENYA BUREAU OF STANDARDS RESPONDENT

The Supreme Court had discretion to extend the time allowed for purposes filing an appeal where there was a delay in obtaining the judges' notes in a timely manner.

Failure to obtain judges' notes timeously on account of the slow administrative processes was good reason to warrant leave to extend time to file an appeal before the Supreme Court.

Reported by John Ribia

Civil Practice and Procedure – appeals – appeals to the Supreme Court - extension of time – extension of time to file an appeal to the Supreme Court – applicable principles - failure to obtain judges' notes timeously on account of the slow administrative processes - whether failure to obtain judges' notes timeously on account of the slow administrative processes was sufficient reason to warrant the Supreme Court to allow an application that sought for leave to extend time to file an appeal - Supreme Court Rules, rule 15(b)

Brief facts

The applicant filed an application for leave to extend time to file an appeal. The applicant contended that the delay was inadvertent. The delay in filing the supplementary record of appeal was occasioned by inability to obtain the judges' notes as they were not available at the time of filing the appeal and that three letters; from the respondent to the Commissioner General, Kenya Revenue Authority; another from the appellant's lawyers, to the respondent and another from the respondent to the appellant's lawyers were all inadvertently omitted from the record of appeal.

The respondent opposed the application on grounds that the application was incompetent as the documents sought to be admitted were not annexed and therefore their authenticity and relevance could not be authenticated. In addition, that the entire record of appeal was jumbled up and the letters in question were



deliberately excluded to prejudice the respondent's case and in any event, the judges' notes had not been served on the respondent and on the whole, allowing the application would greatly inconvenience the respondent.

Issues

Whether failure to obtain judges' notes timeously on account of the slow administrative processes was sufficient reason to warrant the Supreme Court to allow an application that sought for leave to extend time to file an appeal.

Held

1. By rule 15(b) of the Supreme Court Rules, 2020, the court could, at its discretion extend time for any action under the rules. The principles for grant of an order of extension of time were that an applicant had to give sufficient reasons for any delay and that the period of delay was nonetheless an important consideration in the court's exercise of discretion to grant or deny the extension.
2. The explanation given by the applicant was reasonable and there was no prejudice caused to the respondent as the three letters sought to be admitted had certainly been in its custody in proceedings before the superior courts below and failure to obtain judges' notes timeously could not be blamed on the applicant but on slow administrative court processes.

Application allowed; the supplementary record of appeal was to be served within 3 days of the instant ruling; each party was to bear their own costs.

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the Notice of Motion by the Appellant/Applicant dated 11th September 2020 and filed on 14th September 2020, which application is brought under Rule 40(4) of the Supreme Court Rules, 2010; and
2. Upon perusing the supporting affidavit of Counsel for the Appellant/ Applicant, Fredrick Ngatia, sworn to on 11th August 2020; and
3. Upon considering the written submissions by the Appellant/Applicant dated 14th September 2020 and filed on the same day wherein the Appellant/Applicant contends that the delay in filing the Supplementary Record of Appeal was occasioned by inability to obtain the Judges' notes as they were not available at the time of filing the Appeal and that three letters; (i) one dated 23rd March 2012 from the Respondent to the Commissioner General, Kenya Revenue Authority; (ii) another dated 25th June 2013 from the Appellant's lawyers, M/s Mahmoud & Gitau Advocates, to the Respondent and; (iii) another dated 15th July 2013 from the Respondent to the Appellant's lawyer, M/s Mahmoud & Gitau Advocates, were all inadvertently omitted from the Record of Appeal and;
4. Noting the Respondent's response to the Motion by way of a Replying Affidavit sworn on 16th September 2020 by Jotham Okome Arwa, Advocate and Submissions filed on 17th September 2020 wherein the Respondent contends that the application is incompetent as the documents sought to be admitted are not annexed and therefore their authenticity and relevance cannot be authenticated. In addition, that the entire record of appeal is jumbled up and the letters in question were deliberately excluded to prejudice the Respondent's case and in any event, the Judges' notes have not been served



on the Respondent and on the whole, allowing the application would greatly inconvenience the Respondent and therefore the same ought to be dismissed with costs; and

5. Having considered the application and the submissions filed by the Appellant/Applicant and by the Respondent by a unanimous decision of this Bench, we find that;
 - a. By Rule 15(b) of this Court's Rules, 2020, the Court may, at its discretion extend time for any action under the Rules – see also *Anuar Loitiptip v Independent Electoral & Boundaries Commission* [2018] eKLR.
 - b. That the principles for grant of an order of extension of time are that an Applicant must give sufficient reasons for any delay and that the period of delay is nonetheless an important consideration in the Court's exercise of discretion to grant or deny the extension – see *Base Titanium Limited v County Government of Mombasa & another SC Petition (App). No. 22 of 2018*.
 - c. In the present case, the explanation given by the Appellant/Applicant is reasonable and we see no prejudice to be caused to the Respondent as the three letters sought to be admitted have certainly been in its custody in proceedings before the Superior Courts below and failure to obtain Judges' notes timeously cannot be blamed on the Appellant/Applicant but on slow administrative Court processes.
6. In the circumstances, we now make orders as follows;
 - a. The Notice of Motion by the Appellant/Applicant dated 11th September 2020 and filed on 14th September 2020 is hereby allowed;
 - b. The Supplementary Record of Appeal shall be filed and served within 3 days of this Ruling.
 - c. Each party shall bear its costs.
7. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2020

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE 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

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I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

Registrar, Supreme Court of Kenya

