



Temoi & another v Governor, Bungoma County & 3 others (Civil Application 17 of 2020) [2020] KESC 10 (KLR) (Civ) (23 September 2020) (Ruling)

John Mining Temoi & another v Governor, Bungoma County & 3 others [2020] eKLR

Neutral citation: [2020] KESC 10 (KLR)

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

CIVIL

CIVIL APPLICATION 17 OF 2020

DK MARAGA, CJ & P, MK IBRAHIM, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ

SEPTEMBER 23, 2020

BETWEEN

JOHN MINING TEMOI 1ST APPLICANT

JOB ARNOLD CHEPKWESI 2ND APPLICANT

AND

GOVERNOR, BUNGOMA COUNTY 1ST RESPONDENT

HON ATTORNEY GENERAL 2ND RESPONDENT

SPEAKER, COUNTY ASSEMBLY OF BUNGOMA 3RD RESPONDENT

COUNTY PUBLIC SERVICE BOARD 4TH RESPONDENT

(Being an application for extension of time to file an appeal out of time from the Judgment and Decree of the Court of Appeal at Kisumu (Githinji, Okwengu & Mohammed, JJA) dated 30th December 2019 in Civil Appeal No. 12 of 2015)

Factors the Supreme Court considered in an application for leave to extend time to file an appeal.

The Supreme Court had the jurisdiction to consider and allow an application for leave to extend time. An applicant that sought extension of time had to satisfy the principles set out in Nicholas Kiptoo Arap Korir Salat v. Independent Electoral & Boundaries Commission & 7 others, SC (App) No. 16 of 2014, [2014] eKLR.

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 factors - what factors did the Supreme Court consider in determining an application for leave to extend time to file an appeal - Supreme Court Rules, rules 38(2)(a) and 39(2).



Brief facts

The applicants filed an application for leave to extend time to file an appeal. The applicants contended that the delay was inadvertent and was posed by the adverse effects caused by the Covid 19 pandemic.

The 1st respondent opposed the application on grounds that the application lacked merit, that the delay was inexcusably inordinate, and that the right of extension was not a right that the applicants deserved.

Issues

What factors did the Supreme Court consider in determining an application for leave to extend time to file an appeal?

Held

1. The Supreme Court had the jurisdiction to consider and allow an application for leave to extend time. An applicant that sought extension of time had to satisfy the principles set out in *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral & Boundaries Commission & 7 others*, SC (App) No. 16 of 2014, [2014] eKLR.
2. The applicants had no reasonable or cogent explanation and did not adduce sufficient reasons for the delay in filing the intended appeal as failure to obtain legal representation was not a sufficient ground for the Supreme Court to exercise its discretion in an application for leave to file an appeal out of time where no evidence was tendered in that regard. And whereas the Covid pandemic initially affected the ability of parties to access the Supreme Court, there was no evidence in the instant case that the applicants were unable to access the Supreme Court or the Court of Appeal in good time to file their appeal.
3. The applicants had not annexed to their application their intended petition of appeal or the grounds of appeal which they wished the court to consider in their intended petition of appeal and to allow the proceedings before the Supreme Court to commence in accordance with rules 38(2)(a) and 39(2) of the Supreme Court Rules, 2020. The applicants had also not explicitly stated what constitutional provisions they intended to rely upon in the intended appeal.

Application dismissed; each party was to bear their own costs.

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the Notice of Motion application by the Applicants dated 13th July 2020 and filed on 14th July 2020, which application is brought pursuant to the provisions of Section 3(d) & (e) of the Supreme Court Act, 2011, Rules 3(5), 15(2) and 38(1) of the Supreme Court Rules, 2020 in which the Applicants seek extension of time to file an appeal out time; and
2. Upon perusing the supporting affidavit of the 2nd Applicant sworn on 13th July 2020; and
3. Upon considering the written submissions by the Applicants dated 13th July 2020 and filed on 14th July 2020 wherein the Applicants contend that the delay in filing an appeal to this Court was inadvertent, and was caused by the adverse effects posed by the Covid 19 pandemic, as well as the inability to timeously obtain legal counsel for representation on a pro bono basis and certified copies of types proceedings from the Court of Appeal; and



The 1st Respondent's submissions dated 14th August 2020 wherein it is contended that the application was without merit, that the delay is inexcusably inordinate, and that the right of extension is not a right that the Applicants deserve, in the instance; and

4. Having considered the application and the submissions filed by the Applicants and the 1st Respondent, by a unanimous decision of this Bench, we find that;

- (a) This Court has the jurisdiction to consider and allow an application for leave to extend time – see *Anuar Loitiptip v. Independent Electoral & Boundaries Commission* SC Petition (App.) No. 18 of 2018; [2018] eKLR as well as Section 21(3) of the Supreme Court Act and Rule 53 of the Supreme Court Rules, 2012;
- (b) That an applicant seeking extension of time must satisfy the principles set out in *Hamida Yaroi Shek Nuri v. Faith Tumaini Kombe & 2 others* SC Petition (App.) No. 38 of 2018; [2019] eKLR, *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral & Boundaries Commission & 7 others* SC (App) No. 16 of 2014; (2014) eKLR among other authorities on extension of time;
- (c) We thus find that the Applicants have no reasonable or cogent explanation and did not adduce sufficient reasons for the delay in filing the intended appeal as failure to obtain legal representation is not a sufficient ground for this Court to exercise its discretion in an application for leave to file an appeal out of time where no evidence is tendered in that regard. And whereas the covid pandemic initially affected the ability of parties to access this Court, there is no evidence in the present case that the Applicants were unable to access this Court or the Court of Appeal in good time to file their appeal.
- (d) Furthermore, the Applicants have not annexed to their application their intended Petition of Appeal or the grounds of appeal which they wish the Court to consider in their intended Petition of Appeal and to allow the proceedings before this Court to commence in accordance with Rules 38(2)(a) and 39(2) of the Supreme Court Rules, 2020 and as determined in *Yusuf Gitau Abdallah v. Building Centre (K) Ltd* Petition No. 27 of 2014; [2014] eKLR;
- (e) The Applicants have also not explicitly stated what constitutional provisions they intend to rely upon in bringing the intended Appeal before this Court as was pronounced in *Suleiman Mwamlole Warrakah & 2 others v Mwamlole Tchappu Mbwana & 4 others* Petition No. 12 of 2018; [2018] eKLR.

5. In the circumstances, we now make ORDERS as follows;

- (a) The Notice of Motion application by the Applicants dated 13th July 2020 and filed on 14th July 2020 is hereby dismissed;
- (b) Each party shall bear its costs.

6. Orders accordingly.

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

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D.K. MARAGA

CHIEF JUSTICE & 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

