



**Olotch v Pan Africa Insurance Co Limited (Civil Application 14 of 2020) [2020] KESC 16 (KLR) (Civ) (4 September 2020) (Ruling)**

*William Olotch v Pan Africa Insurance Co. Limited [2020] eKLR*

Neutral citation: [2020] KESC 16 (KLR)

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

**CIVIL**

**CIVIL APPLICATION 14 OF 2020**

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

**SEPTEMBER 4, 2020**

**BETWEEN**

**WILLIAM OLOTCH ..... APPLICANT**

**AND**

**PAN AFRICA INSURANCE CO LIMITED ..... RESPONDENT**

*(Being an application for extension of time to file an application for review of the Ruling of the Court of Appeal at Nairobi (Ouko (P), Koome & Murgor, JJA) dated 22nd May 2020 declining to grant certification in Civil Application No. SUPP 15 of 2019)*

**Adverse effects of the Covid 19 pandemic deemed to be reasonable explanation to warrant the enlargement of time to file an application of review before the Supreme Court.**

*Delay occasioned by the adverse effects of Covid 19 deemed to be a reasonable and cogent explanation for delay in filing his application for review of a Court of Appeal decision.*

Reported by John Ribia

**Civil Practice and Procedure** – review – review of a Court of Appeal decision by the Supreme Court – inadvertent delay – application for enlargement of time - whether the adverse effects of the Covid 19 pandemic could be considered as reasonable explanation to warrant the enlargement of time to file an application of review before the Supreme Court – Supreme Court Act, section 21(3); Supreme Court Rules, rule 53.

**Brief facts**

The applicant sought enlargement of time to file an application for review of the ruling of the Court of Appeal in Civil Application No. SUPP 15 of 2019. The applicant contended that the delay in filing the application for review was inadvertent, and was caused by the adverse effects posed by the Covid 19 pandemic, including restrictions on travel imposed by the Government coupled with challenges in accessing reliable internet.



## Issues

Whether the adverse effects of the Covid 19 pandemic could be considered as reasonable explanation to warrant the enlargement of time to file an application for review before the Supreme Court.

## Held

1. The Supreme Court had the jurisdiction to consider and allow an application for leave to extend time as settled and pronounced under section 21(3) of the Supreme Court Act and rule 53 of the Supreme Court Rules, 2012. The application by the applicant satisfied the principles set out by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral & Boundaries Commission & 7 others* (2014) eKLR
2. The applicant had a reasonable and cogent explanation and adduced sufficient reasons for the inadvertent delay in filing his application for review of the Court of Appeal decision on certification in Civil Application No. SUPP 15 of 2019. The respondent had not shown what prejudice would be occasioned upon him if the applicant's application was allowed.

*Application allowed.*

## Orders

- i. *The respondent was to file and serve its response to the originating motion within 14 days of service.*
- ii. *The Deputy Registrar was to issue any and further directions as could be deemed necessary in the circumstances.*
- iii. *Each party shall bear its own costs.*

## Citations

## Statutes

None referred to

## Advocates

None mentioned

## RULING

- (1) Upon perusing the Notice of Motion by the Applicant dated 29th June 2020 and filed on 30th June 2020, which application is brought pursuant to the provisions of Section 23(2)(b) of the Supreme Court Act, 2012 and Rules 15(2) and 31 of the Supreme Court Rules, 2020 and in which the Applicant seeks enlargement of time to file an application for review of the Ruling of the Court of Appeal (Ouko (P), Koome & Murgor, JJA) in Civil Application No. SUPP 15 of 2019 dated 22nd May 2020; and
- (2) Upon perusing the Supporting Affidavit of the Applicant dated 29th June 2020 and the Respondent's Grounds of Opposition dated 7th July 2020 and filed on 14th July 2020; and
- (3) Upon considering the written submissions on record for the Applicant and the Respondent dated 29th June 2020 and 14th July 2020, respectively, wherein the Applicant contends that the delay in filing the application for review to this Court was inadvertent, and was caused by the adverse effects posed by the Covid 19 pandemic, including restrictions on travel imposed by the Government and coupled with the challenges in accessing reliable internet; and The Respondent in opposing the application submits that the explanation advanced by the Applicant is not plausible; that the reasons for the delay are not satisfactory, and, that the application lacks merit, is an abuse of the processes of this Court and does not disclose any substantial grounds for the Court to exercise its discretion; and
- (4) Having considered the application, the Grounds of Opposition and the submissions filed by the respective parties, 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 as settled in *Anuar Loitiptip v. Independent Electoral & Boundaries Commission SC Petition (App.) No. 18 of 2018*; [2018] eKLR and as pronounced under Section 21(3) of the Supreme Court Act and Rule 53 of the Supreme Court Rules, 2012;
  - (b) That the application by the Applicant dated 29th June 2020 and filed on 30th June 2020 satisfies the principles set out by this Court in *Hamida Yaroi Shek Nuri v. Faith Tumaini Kombe & 2 others SC Petition (App.) No. 38 of 2018*; [2019] eKLR, *Mutanga Tea & Coffee Limited v. Shikara Limited & another SC Application No. 19 of 2016*, *Base Titanium Limited v. County Government of Mombasa & another SC Petition (App). No. 22 of 2018* and *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral & Boundaries Commission & 7 others SC (App) No. 16 of 2014*; (2014) eKLR on extension of time;
  - (c) We thus find that the Applicant has a reasonable and cogent explanation and adduced sufficient reasons for the inadvertent delay in filing his application for review of the Court of Appeal decision on certification in Civil Application No. SUPP 15 of 2019;
  - (d) The Respondent has not shown what prejudice shall be occasioned upon him if the Applicant's application is allowed, in the instance.
- (5) In the circumstances, we now make Orders as follows;
- (a) The Notice of Motion by the Applicant dated 29th June 2020 and filed on 30th June 2020 is hereby allowed;
  - (b) The draft Originating Motion marked as "WO-4" annexed in the supporting affidavit of the Applicant is hereby allowed and deemed as duly filed and shall be served upon the Respondent within 14 days of this Ruling;
  - (c) The Respondent shall file and serve its response to the Originating Motion within 14 days of service;
  - (d) The Deputy Registrar shall issue any and further directions as may be deemed necessary in the circumstances;
  - (e) Each party shall bear its own costs.
- (6) Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 4TH 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**

.....

**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**

