



**Gichanga v Secretary, Teachers Service Commission (Application
3 of 2019) [2019] KESC 88 (KLR) (17 December 2019) (Ruling)**

Jimnah Mwangi Gichanga v Secretary, Teachers Service Commission [2019] eKLR

Neutral citation: [2019] KESC 88 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
APPLICATION 3 OF 2019
MK IBRAHIM, JB OJWANG, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
DECEMBER 17, 2019**

BETWEEN

JIMNAH MWANGI GICHANGA APPLICANT

AND

THE SECRETARY, TEACHERS SERVICE COMMISSION RESPONDENT

(Being an application for extension of time to file and serve a Notice of Appeal and Appeal out of time against the Judgment and Orders of the Court of Appeal (Sichale, Kantai & Waki JJ.A) in Civil Appeal No. 122 of 2017 delivered at Nairobi on the 20th April, 2018)

Supreme Court declines to allow extension of time to file an appeal citing applicant's failure to explain the inordinate delay of 290 days

Reported by Moses Rotich

Civil Practice and Procedure – appeals – appeals to the Supreme Court – timelines for filing appeals – extension of time – claim that the delay in filing an appeal was occasioned by the Court of Appeal's failure to inform the applicant of his right of appeal – whether the delay amounted to a sufficient basis for extension of time – Supreme Court Act, 2011, section 23(2) (b); Supreme Court Rules, 2012, rules 21 & 23

Brief facts

The applicant sought extension of time to file a notice of appeal and an appeal out of time on grounds that the Court of Appeal failed to inform him of his right of appeal to the Supreme Court under article 163(4)(b) of the Constitution of Kenya, 2010.

Issues

- i. Whether the applicant's claim that the Court of Appeal failed to inform him of his right of appeal to the Supreme Court amounted to a sufficient basis for extension of time to file an appeal at the Supreme Court.



Held

The averments and written submissions by the applicant in support of his application for extension of time to file an appeal, did not provide a sufficient basis upon which the court could exercise its discretion to indulge the applicant. The reasons advanced by the applicant to explain the inordinate delay (to wit, 290 days), in filing the appeal, were neither reasonable nor credible. The application did not meet the threshold for grant of extension of time as previously set out in past decisions of the court.

Application dismissed

Orders

- i. *Application dismissed*
- ii. *No order as to costs.*

Citations

Statutes

1. Constitution of Kenya, 2010
2. Supreme Court Act

Advocates

None mentioned

RULING

12. Upon perusing the Notice of Motion Application dated 1st February 2019, and brought under Sections 15 and 16 of the *Supreme Court Act*, and any other enabling provisions of law, seeking extension of time to file a Notice of Appeal and an Appeal out of time against the Judgment and Orders of the Court of Appeal, in Civil Appeal No. 122 of 2017 delivered on 20th April, 2018; and
2. Upon reading the Applicant's grounds in support of the application and his undated but sworn supporting affidavit, wherein he avers that; the delay in filing the Notice of Appeal was occasioned, not by any act or omission on his part, but by the failure of the Court of Appeal, to inform him of his right of appeal to the Supreme Court, under Article 163 (4) (b) of *the Constitution*; and
3. Upon considering the Applicant's written submissions filed on 2nd August 2019, wherein, the Applicant merely draws the Court's attention, without more, to the failure by the Respondent, to file written submissions in response to the Application as directed by the Deputy Registrar; and
4. While noting that indeed, the Respondent has failed to comply with the directions of this Court, requiring it to file written submissions in response to the Application herein, within the specified timeframes;
5. We find as follows:

The averments and written submissions, by the Applicant herein, in support of his Application for extension of time to file an Appeal, do not provide a sufficient basis upon which, this Court can exercise its discretion to indulge the Applicant. The reasons advanced by the Applicant, to explain the inordinate delay (to wit, 290 days), in filing the Appeal, are neither reasonable, nor credible. The Application does not meet the threshold for grant of extension of time as set out in *Nicholas Kiptoo Korir Salat v. Independent Electoral and Boundaries Commission & 7 Others Application No. 16 of 2014* and in *Hassan Nyanje Charo v. Khatib Mwashetani & 3 Others SC Application No. 15 of 2014*;



Having made the foregoing determinations, by a unanimous decision of this Bench, we make the following Orders under Section 23(2)(b) of the Supreme Court Act, 2011 and Rules 21 and 23 of the Supreme Court Rules, 2012;

Orders

- (i) The Application dated 1st February, 2019 and filed on 4th February, 2019 is hereby dismissed.
- (ii) No Orders as to cost.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2019.

.....

M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

.....

J. B. OJWANG

JUSTICE OF THE SUPREME COURT

.....

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

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

