



REPUBLIC OF KENYA



KENYA LAW
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**Muia & another v Kababu (Application 19 of 2019)
[2019] KESC 87 (KLR) (17 December 2019) (Ruling)**

Lither Peter Muia & another v Zuena Ngando Kababu [2019] eKLR

Neutral citation: [2019] KESC 87 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

APPLICATION 19 OF 2019

DK MARAGA, CJ, MK IBRAHIM, JB OJWANG, SC WANJALA & N NDUNGU, SCJJ

DECEMBER 17, 2019

BETWEEN

LITHER PETER MUIA 1ST APPLICANT

ROSE PETER MUIA 2ND APPLICANT

AND

ZUENA NGANDO KABABU RESPONDENT

(Being an application for extension of time to file a Notice of Appeal and an Appeal out of time against the decision of the Court of Appeal (Kariuki, Sichale & Kantai JJ.A) in Civil Appeal No. 10 of 2017 delivered at Nairobi on the 20th December, 2019)

RULING

- 1 Upon perusing the Notice of Motion Application by the Applicants dated 21st June 2019, brought under Article 1634 b of the *Constitution* of Kenya, Section 3 e of the *Supreme Court Act* and Rules 32 & 5, 31, 33 and 53 of the *Supreme Court Rules* 2012, seeking an extension of time, to file a Notice of Appeal out of time against the Judgment and Orders of 27th May 2016, by the Court of Appeal in Civil Appeal No. 10 of 2017; and
- 2 Upon reading the Applicants' grounds in support of the Application and the Supporting Affidavit sworn on 21st June 2019, by Lither Peter Muia, wherein, the Applicants aver that, the delay in filling the Notice of Appeal was occasioned by their former advocates' Messers Nzilani Muteti failure to file the same and commence Certification Proceedings at the Court of Appeal, notwithstanding instructions by the Applicants to do so.
- 3 Upon considering the Applicants' written submissions dated 18th July 2019, and filed on 19th July 2019, wherein the Applicants restate the grounds and the averments in support of their Application; and



further considering the Applicants’ argument to the effect that the delay in filing the Notice of Appeal is solely attributable to their advocates whose dereliction of duty ought not to be visited Upon them; and

4 Upon reading the Respondent’s Grounds of Objection dated 1st July 2019, and Replying Affidavit sworn on even date, in which she opposes the Application, arguing;

i That the same is incompetent, as it offends the requirements of Rule 241 of this Court’s Rules on Certification;

ii That the delay of one and half years, since the Court of Appeal rendered its decision, is not only inordinate but also unexplained; and as such, the Court ought not to exercise its discretion in favour of the Applicants; and

5 Upon considering the Respondent’s written submissions dated 29th July 2019 and filed on 30th July 2019 wherein it is argued that the shifting of the blame for the delay by the Applicants to their advocates is not reason enough to warrant this Court’s exercise of discretion in their favour, as there is no evidence on record, of the purported instructions; and further, that as the Application for extension of time, is intended to pave way for the commencement of Certification Proceedings in the Court of Appeal, the same should have been filed in the Appellate Court;

6 We Find as follows:

a While we recognize the principle that the mistakes of an advocate, ought not to be visited Upon his client, there is no evidence on record, to show that such instructions, as had been given by the Applicants to their advocates to file a Notice of Appeal were not acted Upon by the latter. Nor is there any communication on record, to back up the claim by the Applicants, to the effect that, their advocates had all along misled them into believing that, Certification Proceedings had been commenced at the Court of Appeal.

b It is clear to us that the Application for extension of time, is intended to pave the way for the commencement of Certification Proceedings in the Court of Appeal. That being the case, the appropriate forum for determining such an application, is the Appellate Court.

7 Having considered the Application and the Affidavit in support filed in support thereof, and the Grounds of Objection and the Replying Affidavit, in opposition thereto, as well as the written submissions of the respective parties, by a unanimous decision of this Bench, we make the following Orders under Section 232b of the Supreme Court Act, 2011 and Rules 21 and 23 of the Supreme Court Rules, 2012;

Orders

i The Application dated June 21, 2019 and filed on June 24, 2019 is hereby dismissed.

ii The applicants shall bear the costs of this Application.

Orders accordingly.

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

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D. K. MARAGA

CHIEF JUSTICE AND PRESIDENT JUSTICE OF THE SUPREME COURT

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M. K. IBRAHIM
JUSTICE OF THE SUPREME COURT

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J. B. OJWANG
JUSTICE OF THE SUPREME COURT

.....

S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....

NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR
SUPREME COURT OF KENYA

