



**Chairman, Kenya National Union of Teachers & another v Inyangala & 2 others
(Civil Application 7 of 2017) [2018] KESC 37 (KLR) (13 April 2018) (Ruling)**

Chairman, Kenya National Union of Teachers & another v Henry Inyangala & 2 others [2018] eKLR

Neutral citation: [2018] KESC 37 (KLR)

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

CIVIL APPLICATION 7 OF 2017

PM MWILU, DCJ & V-P, JB OJWANG, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ

APRIL 13, 2018

BETWEEN

CHAIRMAN, KENYA NATIONAL UNION OF TEACHERS 1ST APPLICANT

CHAIRMAN, KAKAMEGA KNUT BRANCH EXECUTIVE

COMMITTEE 2ND APPLICANT

AND

HENRY INYANGALA 1ST RESPONDENT

DRAKE F. AMBUNDO 2ND RESPONDENT

ISAAC MUDOGO 3RD RESPONDENT

*(Being an application for extension of time to file a Notice of Appeal
to the Supreme Court arising from Kisumu Civil Appeal No.54 of
2014 (Maraga, Kairu, Murgor, JJA) delivered on 12th February 2016)*

Seeking of extension of time to file a notice of appeal after one year and three months amounts to inordinate delay

*Applications seeking extension of time must meet the expectations and principles laid down by the Supreme Court
o in Nicholas Kiptoo Arap Salat v. IEBC & 7 Others [2014] eKLR*

Reported by Kakai Toili

***Appeals** – institution of appeals - notice of appeal – filing of a notice of appeal – time within which to file a notice of appeal – extension of time to file a notice of appeal – where an applicant sought extension after one year and three months – whether seeking extension of time to file a notice of appeal after one year and three months amounted to inordinate delay.*



Brief facts

The applicant filed the instant application seeking extension of time to file a notice of appeal. The applicant contended that the delay in filing the notice of appeal was inadvertent and was occasioned by the fact that the deponent to the affidavit in support of the application and the management of the Kakamega KNUT Executive Committee were unaware of the delivery of the judgment in Civil Appeal No.54 of 2014 by the Court of Appeal and that when they became aware of it, they erroneously filed an application for extension of time to appeal before the Court of Appeal instead of the Supreme Court.

Issues

Whether seeking extension of time to file a notice of appeal after one year and three months amounted to inordinate delay.

Held

1. The explanation given by the applicant was unsatisfactory and unreasonable. The delay of 1 year and 3 months was inordinate and the applicants were guilty of laches. The application did not meet the expectations and principles laid down by the court on extension of time.

Application dismissed, applicants to pay the costs of the application.

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the Notice of Motion application dated 27th March, 2017 and filed on 7th April 2017, for extension of time to file a notice of appeal; and
2. Upon reading the applicant's affidavit sworn by Laban Bitonye Wakhision 27th March 2017, the Respondents' replying affidavit sworn by Evans Onsando Getanda on 18th April, 2017; and
3. Upon considering the written submissions on record for applicant and the respondents, wherein the applicant contends that, the delay in filing a notice of appeal was inadvertent and was occasioned by the fact that the deponent to the affidavit in support of the application and the management of the Kakamega KNUT Executive Committee were unaware of the delivery of the judgment in Civil Appeal No.54 of 2014 by the Court of Appeal and when they became aware of it, they erroneously filed an application for extension of time to appeal before that Court instead of this Court, the time to comply with this Court's Rules had lapsed hence this application; and
4. The respondents submitting that the delay is inordinate and inexcusable and that contrary to the applicants' assertions, notice of delivery of judgment was given to all parties by the Court of Appeal; and in any event, that the substratum of the intended appeal is outside the jurisdiction of this Court and also outside the purview of Article 163(4)(b), then the application is without merit and should be dismissed with costs.
5. And having considered the application, by a unanimous decision of this Bench, we make the following Orders under Section 23(2) (b) of the Supreme Court Act, and Rule 23 of the Supreme Court Rules, 2012 (as amended).



Orders	Reasons
a. The Notice of Motion Application dated 5 th July, 2016 is hereby dismissed.	a. The explanation given by the applicant is unsatisfactory and unreasonable. We regard the delay of 1 year and 3 months as inordinate and the applicants are guilty of laches.
b. The applicants shall pay the costs of the application.	b. The application does not meet the expectations and principles laid down by this Court on extension of time as was set out in Nicholas Kiptoo Arap Salat v. IEBC & 7 Others [2014] eKLR

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF APRIL, 2018

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M. MWILU

DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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J. B. OJWANG

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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N. S. NJOKI

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

