



Speaker, Kakamega County Assembly v Malala & 2 others (Petition 17 of 2016) [2018] KESC 40 (KLR) (13 April 2018) (Ruling)

Speaker, Kakamega County Assembly v Cleophas Wakhungu Malala & 2 others [2018] eKLR

Neutral citation: [2018] KESC 40 (KLR)

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

PETITION 17 OF 2016

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

APRIL 13, 2018

BETWEEN

SPEAKER, KAKAMEGA COUNTY ASSEMBLY APPLICANT

AND

CLEOPHAS WAKHUNGU MALALA 1ST RESPONDENT

CLERK, KAKAMEGA COUNTY ASSEMBLY 2ND RESPONDENT

KAKAMEGA COUNTY ASSEMBLY 3RD RESPONDENT

((Being an application for extension of time to file an appeal against the Court of Appeal's Judgment in Civil Appeal No.77 of 2014 (Maraga, Musinga, Kairu, JJA) delivered on 12th February, 2016))

Circumstances under which the Supreme Court would extend time for the filing of an appeal

The instant matter was an application for extension of time to file an appeal against the judgment of the Court of Appeal. The court noted that the 3 months' delay in filing the appeal was inadvertent and was occasioned by the fact that the applicant and his advocate were unaware of the delivery of the judgment. The court held that the explanation offered by the applicant was satisfactory and in the circumstances the delay was not inordinate.

Reported by Beryl A Ikamari

Civil Practice and Procedure - appeals - time within which an appeal to the Supreme Court from the Court of Appeal ought to be filed - delay in filing an appeal - extension of time for filing an appeal - circumstances under which the Supreme Court would grant orders for the extension of time within which to file an appeal - whether a delay of three months in filing an appeal, caused by the fact that the applicant was unaware that the Court of Appeal judgment against which he sought to file an appeal had been issued, could be remedied by an order to extend time for the filing of an appeal.



Brief facts

The applicant made an application for extension of time to file an appeal against the Court of Appeal's judgment in Civil Appeal No 77 of 2014. The reason offered for the 3 months delay in filing the intended appeal was that he was unaware that judgment had been delivered by the Court of Appeal.

Issues

Whether a delay of three months in filing an appeal, caused by the fact that the applicant was unaware that the Court of Appeal judgment against which he sought to file an appeal had been issued, could be remedied by an order to extend time for the filing of an appeal.

Held

1. The 3 months' delay in filing the appeal was inadvertent and was occasioned by the fact that the applicant and his advocate were unaware of the delivery of the judgment. They only got to know about it on June 27, 2016 when his court clerk was sent to the Kisumu Court of Appeal Registry and they could not have appealed against the judgment which was delivered on February 12, 2016.
2. The explanation offered by the applicant was satisfactory and in the circumstances the delay was not inordinate. There was no apparent prejudice that would be suffered by the respondents who had chosen not to oppose the application.

Application allowed.

Orders

- i. *The notice of motion application dated May 1, 2016 was allowed.*
- ii. *The appeal shall be filed and served within 14 days of the ruling.*
- iii. *There shall be no order as to costs.*

Citations

Statutes

None referred to

Advocates

None mentioned

RULING

1. Upon perusing the Notice of Motion Application dated 1st May, 2016 and filed on 5th July, 2016, for extension of time to file an appeal against the Court of Appeal's Judgment in Civil Appeal No.77 of 2014 and;
2. Upon reading the applicant's affidavit in support sworn by Prof. Tom Ojienda, SC on 1st July, 2016; and
3. Upon considering the written submissions on record for the applicant wherein the applicant contends that the 3 months' delay in filing an appeal was inadvertent and was occasioned by the fact that the deponent to the affidavit in support of the application, (the advocate for the applicant) and his clients were unaware of the delivery of the Judgment and only got to know of it when he sent his Court clerk to the Kisumu Court of Appeal Registry on 27th June 2016 and he could not therefore have appealed against the judgment delivered on 12th February within the time stipulated in the Rules of this Court;
4. AND having considered the application (noting that the respondents have not opposed 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 1 st May, 2016 is hereby allowed.	(a) The explanation given by the applicant is satisfactory and in the circumstances, we do not regard the delay as inordinate. (See <i>Nicholas Kiptoo Arap Salat v IEBC & 7 Others</i>). Further, there is no apparent prejudice confronting the respondents who have chosen not to oppose the application despite being granted leave by this Court on 20 th July 2016 to file their responses out of time.
(b) The appeal shall be filed and served within 14 days of this Ruling.	
(c) There shall be no order as to costs	

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

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P. 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

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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

