



**Law Society of Kenya v Attorney General & another (Civil Application
20 of 2018) [2018] KESC 2 (KLR) (21 December 2018) (Ruling)**

Law Society of Kenya v Attorney General & another [2018] eKLR

Neutral citation: [2018] KESC 2 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
CIVIL APPLICATION 20 OF 2018
DK MARAGA, CJ, MK IBRAHIM, JB OJWANG, SC WANJALA & I LENAOLA, SCJJ
DECEMBER 21, 2018**

BETWEEN

LAW SOCIETY OF KENYA APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

CENTRAL ORGANIZATION OF TRADE UNIONS 2ND RESPONDENT

(Being an application for extension of time within which to file and serve a notice of appeal against part of the Judgment and Orders of the Court of Appeal (Waki, Makhandia and Ouko, JJA) delivered on 17th November, 2017 in Civil Appeal No. 113 of 2011)

RULING

1. Upon perusing the application dated 9th July, 2018 and filed on 10th July, 2018 for extension of time to file and serve a Notice of Appeal and;
2. Upon reading the affidavit and supplementary affidavit of Mercy Wambua, sworn and dated 11th July, 2018 and 17th July, 2018 respectively, in support of the application and;
3. Upon reading the replying affidavit of Francis Atwoli, on behalf of the 2nd respondent, sworn and dated 27th July, 2018 in opposition to the application;
4. We Have Considered the written submissions on record for the applicant and respondents. The applicant herein contends that the delay in filing a Notice of Appeal, is not attributable to any fault or complacency on its part. On the contrary, submits the applicant, the delay in filing the Notice of Appeal was caused by the administrative inaction of the Court of Appeal Registry. Towards this end, the applicant claims that it was not served with the Notice of Delivery of Judgment; and only became



aware of the said Judgment on 28th May, 2018 through its Secretary, who is the deponent herein. The applicant further contends that as the subject matter of the intended appeal is of great public interest, the same should be accommodated by this Court through extension of time. Finally, it is the applicant's submission that the respondents would suffer no prejudice if the application were allowed.

5. The respondents, on the other hand, submit that no plausible or compelling reasons have been advanced by the applicant to warrant this Court's indulgence, so as to extend time in its favour. It is the respondents' submission that the claim by the applicant to the effect that the Notice of Delivery of Judgment was not served upon it, is incorrect and misleading. On the contrary, assert the respondents, the Notice of Delivery of Judgment dated 23th November, 2017 was served on the parties. A copy of the Notice of Delivery of Judgment is annexed to the replying affidavit of Francis Atwoli and marked "FLA-1". The 2nd respondent submits that despite the Notice for delivery of Judgment, the applicant did not attend court. Finally, the respondents argue that the Judgment, that is intended to be appealed, is already being implemented effectively without any hitches.

Although the respondents have annexed a copy of the Notice of Delivery of Judgment, it is not clear to us, if the same was actually served upon the applicant. In this regard, there is no supporting affidavit by an officer from the Court of Appeal Registry, indicating that the applicant was actually aware of the date of delivery of Judgment. In the premises, we think it would be unsafe, to brush aside the applicant's reasons for the delay in filing the Notice of Appeal within time.

6. Having Considered the application, and the written submissions by the parties, by a unanimous decision of this Bench, we make the following Orders under section 23 (2) (b) of the *Supreme Court Act*, and rule 21 of the *Supreme Court Rules* (2015).

Orders	Reasons
The application dated 9 th July 2018, is hereby allowed.	The applicant has offered a reasonable explanation for the delay in filing the Notice of Appeal.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF DECEMBER, 2018.

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D. K. MARAGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

.....
M. K. IBRAHIM

JUSTICE OF THE SUPREME

.....
J. B. OJWANG

JUSTICE OF THE SUPREME

.....
S. C. WANJALA

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

