



Edward Akong’o Oyugi v Zacharia Okoth Obado, Independent Electoral and Boundaries Commission & Jairus Obaga-County Returning Office Migori County (Application 7A of 2016) [2017] KESC 23 (KLR) (Civ) (24 March 2017) (Ruling)

Edward Akong’o Oyugi v Zacharia Okoth Obado & 2 others [2017] eKLR

Neutral citation: [2017] KESC 23 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
CIVIL
APPLICATION 7A OF 2016
MK IBRAHIM & I LENAOLA, SCJJ
MARCH 24, 2017**

BETWEEN

EDWARD AKONG’O OYUGI APPLICANT

AND

ZACHARIA OKOTH OBADO 1ST RESPONDENT

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 2ND RESPONDENT

JAIRUS OBAGA COUNTY RETURNING OFFICE , MIGORI COUNTY 3RD RESPONDENT

(Being an application for extension of time to file an application for review and setting aside of part of the Judgment of the Supreme Court in Petition No. 4 of 2014 delivered on 17th July, 2014 at Nairobi(Mutunga C.J&P, Rawal DC.J & V.P, Tunoi, Ibrahim, Ojwang, Wanjala & Njoki, SCJJ)

An Application for Extension of Time should be explained to the satisfaction of the Court

Reported by Phoebe Ida Ayaya

Civil practice and procedure – extension of time – delay in obtaining typed proceedings – whether there was a reasonable explanation for the delay of 21 months in filing of extension of time by the applicant – whether the application satisfied the principles that where there was a reasonable explanation for the delay it was to be explained to the satisfaction of the Court - merit of application- Supreme Court Act section 23(2)(b); Supreme Court Rules, 2012 rules 21 and 23



Brief facts

The application was based on a notice of motion for extension of time to file an application for review of part of the court's judgment in Petition No. 4 of 2014, directing the applicant to pay costs to the 1st respondent and that the grant of leave to act as a stay of execution.

Issues

- i. Whether the Notice of Motion satisfied the principles laid down in the Nicholas *Salat* case that where there was a reasonable reason for the delay, it was to be explained to the satisfaction of the Court.
- ii. Whether there was a reasonable reason for the delay of the 21 months in filing of the extension of time by the Applicant.

Held

1. The application did not satisfy the principles laid down in the case of *Nicholas Kiptoo Arap Korir Salat* that where there was a reasonable reason for the delay, it was to be explained to the satisfaction of the Court.
2. The delay of 21 months was unjustifiable and unreasonable. The delay was also inordinate.

Application dismissed with costs to the Respondents.

Citations

East Africa

1. *Salat, Nicholas Kiptoo Arap Korir v Independent Electoral and Boundaries Commission & 7 others*, Application No 16 of 2014 - (Followed)

East Africa

Statutes

1. Supreme Court Act, 2011 (Act No 7 of 2011) section 23(2) (b) – (Interpreted)
2. Supreme Court Rules, 2012 (Act No 7 of 2011 Sub Leg) rules 21, 23 – (Interpreted)

RULING

1. Upon perusing the Notice of Motion application dated 25th April, 2016 and filed on 27th April, 2016, for extension of time to file an application for review of part of this Court's Judgment in Petition No. 4 of 2014, directing the applicant to pay costs to the 1st respondent and that the grant of leave do act as a stay of execution; and
2. Upon reading the applicant's affidavit sworn by Edward Akongo Oyugi, on 25th April, 2016, the 1st respondent's replying affidavit sworn by Zachariah Okoth Obado on 17th October, 2016 and the 2nd and 3rd respondents replying affidavit sworn by Praxedes Tororey on 14th September, 2016; and
3. Upon considering the written submissions on record for the applicant and the respondents, wherein, the applicant contends that the delay was occasioned by the conduct of his then advocate on record, who despite being given instructions failed to file the application for review necessitating a change of advocates; and the 1st respondent's contention that the delay of 21 months from the date of the delivery of Judgment is inordinate, inexcusable and unreasonable and in any case that this Court is functus officio, having given its final determination. Further, noting the 2nd and 3rd respondents' opposition to the application, arguing that the 2 years' delay is inordinate and that the applicant has not given any justifiable reason for the said delay and that the applicant has not provided any evidence to show that his former advocate failed to act on any instructions given.



4. Andhaving 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 21 and 23 of the Supreme Court Rules, 2012(as amended).

Orders

- a. The Notice of Motion Application dated 25th April, 2016 is hereby dismissed with costs to the respondents as costs follow the event.

Reasons

- a. The application does not satisfy the principles laid down in the case of Nicholas Kiptoo Arap Korir Salat v. The Independent Electoral and Boundaries Commission & 7 Others, Appl. No. 16 of 2014.
- b. The delay of 21 months is unjustifiable and unreasonable in the circumstances. The said delay is also inordinate.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MARCH, 2017.

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M.K. IBRAHIM I. LENAOLA

**JUSTICE OF THE SUPREME JUSTICE OF THE SUPREME
COURT COURT**

**I certify that this is a
true copy of the original
REGISTRAR, SUPREME COURT**

