



Gachaki v Kinyua (Application 1 of 2016) [2017] KESC 21 (KLR) (24 March 2017) (Ruling)

Joseph Kinyua Gachaki v Pauline Wandia Kinyua [2017] eKLR

Neutral citation: [2017] KESC 21 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
APPLICATION 1 OF 2016
MK IBRAHIM & SC WANJALA, SCJJ
MARCH 24, 2017**

BETWEEN

JOSEPH KINYUA GACHAKI APPLICANT

AND

PAULINE WANDIA KINYUA RESPONDENT

(Being an application for extension of time and review of the decision given by Court of Appeal at Nyeri (Waki, Nambuye & Kiagi, JJ.A) dated 2nd December, 2015, denying certificate of leave to file an appeal to the Supreme Court in Sup.Ct. Civil Application No. 3 of 2015)

Delay in filing an appeal out of time must be justifiable

The decision highlights the need to provide a reasonable justification for delay in applications for extension of time.

Reported by Nelson Tunoi

Civil Practice and Procedure – extension of time – application for extension of time and review of the decision of the Court of Appeal – where the Court of Appeal denied certificate of leave to file an appeal in the Supreme Court – whether the application had merit – Supreme Court Act, section 23(2)(b); Supreme Court Rules, 2015, Rule 21

Brief facts

An application for extension of time to file a notice of appeal was lodged before the Supreme Court. The Applicant contended that the delay in filing a notice of appeal was occasioned by financial difficulties on his part, and a misapprehension of the law on the part of his advocate. The respondent opposed the application on grounds that, the reasons advanced by the applicant could not justify the extension of time as sought.

Held

1. No compelling reasons were presented to the court as a justification for the inordinate delay.

Application dismissed with costs.

Citations

Statutes



None referred to
Advocates
None mentioned

RULING

1. Upon perusing the application dated 19th January and filed on 22nd January, 2016 for extension of time to file a Notice of Appeal and;
2. UPON reading the affidavit of Joseph Kinyua Gachaki in support thereof, sworn on 19th January, 2016;
3. We have considered the written submissions on record for the applicant and the respondent. The applicant herein, contends that, the delay in filing a Notice of Appeal, is not attributable to any fault or complacency on his part. The applicant submits that, the delay was occasioned by financial difficulties on his part, and a misapprehension of the law on the part of his Advocate. The respondent opposes the application, on grounds that, the reasons advanced by the applicant, for the inordinate delay in filing the Notice of Appeal, cannot justify the extension of time as sought.
4. 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 21 of the Supreme Court Rules (2015).

Orders	Reasons
The application dated 19 th January, 2016 is hereby dismissed with costs.	No compelling reasons have been presented to the Court as a justification for the inordinate delay.

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

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

