

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ELCC No. 34 OF 2018

SOLOMON ONZERE TSISAGA PLAINTIFF
VERSUS

COUNTY GOVERNMENT OF KAKAMEGA DEFENDANT

RULING

1. By judgment delivered in this matter on 25th January 2023, the plaintiff's case was dismissed with no order on costs. Later, the plaintiff filed Notice of Motion dated 28th February 2023, seeking extension of time to file Notice of Appeal against the judgment. The application is supported by an affidavit sworn by the plaintiff.
2. The plaintiff deposed that he attended court on 25th January 2023 in the morning, but judgment was not read until the court went on lunch break. That his advocates paid for a certified copy of the judgment on 3rd February 2023 and that it was supplied to them on 20th February 2023, upon which he knew that his case had been dismissed.
3. The defendant opposed the application through grounds of opposition dated 13th April 2023 in which it took the position that the court lacks jurisdiction to grant the orders, that the applicant is guilty of inordinate delay and that the application is bad in law.
4. The application was canvassed through written submissions which both parties duly filed.

5. I have carefully considered the application, the supporting affidavit, the grounds of opposition and the written submissions.
6. From the onset, I must allay the defendant's fears on jurisdiction. The court has jurisdiction pursuant to **Section 7** of the **Appellate Jurisdiction Act** which provides:

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired: ...

7. The guiding principles in an application such as the present one were identified by the Supreme Court in Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR as follows:

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

- 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;*
- 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court*
- 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;*

4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

5. Whether there will be any prejudice suffered by the respondents if the extension is granted;

6. Whether the application has been brought without undue delay; ...

8. Judgment was delivered in this matter on 25th January 2023. In view of **Rule 75** of the **Court of Appeal Rules, 2010**, notice of appeal was to be lodged within fourteen days of delivery of the judgment, that is, by the end of the day on 8th February 2023.

9. The present application was filed on 28th February 2023, 20 days after the time for filing Notice of Appeal had lapsed. The applicant claims that when he attended court on 25th January 2023 in the morning for delivery of judgment, judgment was not read until the court went on lunch break and that he only learnt that his case had been dismissed when a copy of the judgment was supplied to his advocate on 20th February 2023. The applicant is being disingenuous. The judgment was delivered on 25th January 2023 at 9:00am, as is the practice of the court for all judgments and rulings. The date of delivery was scheduled on 6th December 2022, in the presence of counsel for the applicant. I note that the applicant has not offered any credible explanation as to non-attendance by his advocates at the time of delivery of the judgment.

10. Whereas I understand the urge to justify the delay, the applicant is reminded that it is the duty of every litigant who seeks discretionary and equitable relief to approach the court with a full and frank disclosure of

material facts. Brazen misrepresentations such as the one advanced by the applicant do not help his case at all. That said, in the circumstances of this case, a delay of 20 days is not inordinate and on the whole, the applicant should be given the opportunity to have his day in the appellate court. I see no prejudice to the respondent beyond that which can be compensated by an award of costs. I will therefore grant extension of time to file a notice of appeal against the judgment.

11. In the result, I make the following orders:

- a) Time for the plaintiff to file Notice of Appeal in respect of the judgment delivered in this matter on 25th January 2023 is hereby extended.
- b) The plaintiff to file and serve Notice of Appeal in respect of the judgment delivered in this matter on 25th January 2023 within 14 (fourteen) days from the date of delivery of this ruling. In default, Notice of Motion dated 28th February 2023 shall stand dismissed with costs to the defendant.

Dated, signed, and delivered at Kakamega this 25th day of April 2023.

D. O. OHUNGO
JUDGE

Delivered in open court in the presence of:

No appearance for the plaintiff

No appearance for the defendant

Court Assistant: E. Juma