



**IN THE COURT OF APPEAL**

**AT ELDORET**

**(CORAM: ODEK.JA. (IN CHAMBERS))**

**CIVIL APPEAL NO. 116 OF 2019**

**BETWEEN**

**LUCAS CHAGWONY .....1<sup>ST</sup> APPLICANT**

**PHILIP K. RUTO.....2<sup>ND</sup> APPLICANT**

**NICHOLAS KOMEN .....3<sup>RD</sup> APPLICANT**

**CHRISTOPHER K. KANGOGO .....4<sup>TH</sup> APPLICANT**

**JOSEPH CHEPKEITANY ..... 5<sup>TH</sup> APPLICANT**

**JAMES CHANGWONY .....6<sup>TH</sup> APPLICANT**

**JOSEPH CHEPKOIYA .....7<sup>TH</sup> APPLICANT**

**AND**

**STANLEY CHEBIATOR .....RESPONDENT**

*(Application for extension of time for lodging notice of appeal, memorandum of appeal and record of appeal from the judgment and decree of the High Court of Kenya at Eldoret (Omondi, J) dated 10<sup>th</sup> January, 2019 in ELDORET HCA NO. 43 OF 1996)*

**RULING**

Before me is a Notice of Motion dated 4<sup>th</sup> September, 2019. The applicant seeks extension of time for lodging a Notice of Appeal against the judgment and decree of the High Court delivered on 10<sup>th</sup> January, 2019 in Eldoret HCA No. 43 of 1996.

The ground in support of the application is that the applicant is aggrieved by the judgment of the High Court. A Notice of Appeal was filed on 28<sup>th</sup> January, 2019 which was way after the 14 days allowed for lodging of the Notice. The instant application is supported by the affidavit of **Loise Kuiyaki** the advocate for the applicant.

In the supporting affidavit it is deposed that the Notice of Appeal was filed 4 (four) days outside the statutory time line allowed for filing the Notice.

There is no explanation or reason given for the 4 days delay in filing the Notice of Appeal.

The respondent has filed a replying affidavit deposed by **Mr. Mukhabani Mwani** advocate. In the replying affidavit, it is averred that the applicant has not given any reason for delay in filing the Notice of Appeal.

I have considered the application for extension of time to file and lodge the Notice of Appeal.

I am cognizant that under Rule 4 of the **Rules of this Court**, I have discretion to extend the time for filing the Notice of Appeal.

In an application for extension of time an applicant needs to satisfy the Court that there has been delay in filing the application; that the delay is not inordinate and reason for delay must be given. In other words the delay must be explained to the satisfaction of the Court.

In this matter, the delay is for a period of four days. On the surface and *prima facie*, a delay of 4 days is not an inordinate delay. However, neither the notice of Motion nor the supporting affidavit has given any explanation or reason for the delay of four days. In the absence of an explanation or reason for delay, I find that there is no factual or legal basis for me to exercise my discretion to extend time.

Accordingly, the Notice of Motion dated 4<sup>th</sup> September, 2019 be and is hereby dismissed for lack of merit. The applicant has failed to give any explanation for the 4 days delay in filing the Notice of Appeal out of time.

I note that the applicant applied for this matter to be taken out of today's hearing list to enable a further affidavit to be filed explaining the reason for delay.

I have considered this application and find it has no merit. In law, dismissal of an application, for extension of time does not bar a party from making a similar application in future.

I hereby award the costs of the instant application to the respondent.

**DATED at Eldoret this 14<sup>th</sup> day of October, 2019.**

**OTIENO ODEK**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**



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