



Case Number:	Civil Appeal 116 of 2019
Date Delivered:	14 Oct 2019
Case Class:	Civil
Court:	Court of Appeal at Eldoret
Case Action:	Ruling
Judge:	James Otieno Odek
Citation:	Lucas Chagwony & 6 others v Stanley Chebiator [2019] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Uasin Gishu
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

IN THE COURT OF APPEAL

AT ELDORET

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

CIVIL APPEAL NO. 116 OF 2019

BETWEEN

LUCAS CHAGWONY1ST APPLICANT
PHILIP K. RUTO.....2ND APPLICANT
NICHOLAS KOMEN3RD APPLICANT
CHRISTOPHER K. KANGOGO4TH APPLICANT
JOSEPH CHEPKEITANY 5TH APPLICANT
JAMES CHANGWONY6TH APPLICANT
JOSEPH CHEPKOIYA7TH APPLICANT

AND

STANLEY CHEBIATORRESPONDENT

(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 10th January, 2019 in ELDORET HCA NO. 43 OF 1996)

RULING

Before me is a Notice of Motion dated 4th 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 10th 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 28th 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 4th 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 14th day of October, 2019.

OTIENO ODEK

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)