

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mwilu, DCJ & V-P, Ojwang, Wanjala, Njoki & Lenaola, SCJJ)

PETITION NO. 17 OF 2016

—BETWEEN—

SPEAKER, KAKAMEGA COUNTY ASSEMBLY.....APPLICANT

—AND—

CLEOPHAS WAKHUNGU MALALA.....1ST RESPONDENT

CLERK, KAKAMEGA COUNTY ASSEMBLY.....2ND RESPONDENT

KAKAMEGA COUNTY ASSEMBLY.....3RD RESPONDENT

(Being an application for extension of time to file an appeal against the Court of Appeal's Judgment in Civil Appeal No.77 of 2014 (Maraga, Musinga, Kairu, JJA) delivered on 12th February, 2016

RULING OF THE COURT

[1] UPON perusing the Notice of Motion Application dated 1st May, 2016 and filed on 5th July, 2016, for extension of time to file an appeal against the Court of Appeal's Judgment in Civil Appeal No.77 of 2014 and;

[2] UPON reading the applicant's affidavit in support sworn by Prof. Tom Ojienda, SC on 1st July, 2016; and

[3] UPON considering the written submissions on record for the applicant wherein the applicant contends that the 3 months' delay in filing an appeal was inadvertent and was occasioned by the fact that the deponent to the affidavit in support of the application, (the advocate for the applicant) and his clients were unaware of the delivery of the Judgment and only got to know of it when he sent his Court clerk to the Kisumu Court of Appeal Registry on 27th June 2016 and he could not therefore have appealed against the judgment delivered on 12th February within the time stipulated in the Rules of this Court;

[5] AND having considered the application (noting that the respondents have not opposed 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 23 of the Supreme Court Rules, 2012 (as amended).

ORDERS	REASONS
(a) The Notice of Motion Application dated 1 st May, 2016 is hereby allowed.	(a) The explanation given by the applicant is satisfactory and in the circumstances, we do not regard the delay as inordinate. (See Nicholas Kiptoo Arap Salat v IEBC & 7 Others). Further, there is no apparent prejudice confronting the respondents who have chosen not to oppose the application despite being granted leave by this Court on 20 th July 2016 to file their responses out of time.
(b) The appeal shall be filed and served within 14 days of this Ruling.	

(c) There shall be no order as to costs	
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DATED and DELIVERED at NAIROBI this 13th Day of April, 2018

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P. M. MWILU
DEPUTY CHIEF JUSTICE & VICE
PRESIDENT OF THE SUPREME COURT

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J. B. OJWANG
JUSTICE OF THE SUPREME COURT

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S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
N. S. NJOKI
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

I certify that this is a
true copy of the original

REGISTRAR,
SUPREME COURT OF KENYA