

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
AT NAIROBI

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

CIVIL APPLICATION NO. 7 OF 2017

THE CHAIRMAN,
KENYA NATIONAL UNION OF TEACHERS.....1ST APPLICANT
THE CHAIRMAN, KAKAMEGA KNUT BRANCH
EXECUTIVE COMMITTEE.....2ND APPLICANT

—VERSUS—

HENRY INYANGALA.....1ST RESPONDENT
DRAKE F. AMBUNDO.....2ND RESPONDENT
ISAAC MUDOGO.....3RD RESPONDENT
*(All suing on their own behalf and on behalf of Kakamega
Teachers Housing Committee and Contributors Groups)*

*(Being an application for extension of time to file a Notice of Appeal to the
Supreme Court arising from Kisumu Civil Appeal No.54 of 2014 (Maraga,
Kairu, Murgor, JJA) delivered on 12th February 2016)*

RULING OF THE COURT

[1] UPON perusing the Notice of Motion application dated 27th March, 2017
and filed on 7th April 2017, for extension of time to file a notice of appeal; and

[2] UPON reading the applicant's affidavit sworn by **LABAN BITONYE WAKHISI** on 27th March 2017, the Respondents' replying affidavit sworn by **EVANS ONSANDO GETANDA** on 18th April, 2017; and

[3] UPON considering the written submissions on record for applicant and the respondents, wherein the applicant contends that, the delay in filing a notice of appeal was inadvertent and was occasioned by the fact that the deponent to the affidavit in support of the application and the management of the Kakamega KNUT Executive Committee were unaware of the delivery of the judgment in Civil Appeal No.54 of 2014 by the Court of Appeal and when they became aware of it, they erroneously filed an application for extension of time to appeal before that Court instead of this Court, the time to comply with this Court's Rules had lapsed hence this application; and

The respondents submitting that the delay is inordinate and inexcusable and that contrary to the applicants' assertions, notice of delivery of judgment was given to all parties by the Court of Appeal; and in any event, that the substratum of the intended appeal is outside the jurisdiction of this Court and also outside the purview of Article 163(4)(b), then the application is without merit and should be dismissed with costs.

[4] AND 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 23 of the Supreme Court Rules, 2012 (as amended).

ORDERS	REASONS
a. The Notice of Motion Application dated 5 th July, 2016 is hereby dismissed.	a. The explanation given by the applicant is unsatisfactory and unreasonable. We regard the delay of 1 year and 3 months as inordinate and the applicants are guilty of laches.
b. The applicants shall pay the costs of the application.	b. The application does not meet the expectations and principles laid down by this Court on extension of time as was set out in <i>Nicholas Kiptoo Arap Salat v. IEBC & 7 Others</i> [2014] eKLR

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

.....
J. B. OJWANG
JUSTICE OF THE SUPREME COURT

.....
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**