



Kimuyu v Disciplinary & Ethics Committee & 3 others (Miscellaneous Civil Application E1025 of 2023) [2024] KEHC 13182 (KLR) (Civ) (31 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13182 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E1025 OF 2023**

**JN MULWA, J
OCTOBER 31, 2024**

BETWEEN

JOHNSON KIMUYU APPLICANT

AND

THE DISCIPLINARY & ETHICS COMMITTEE 1ST RESPONDENT

KKENYA MEDICAL PRACTITIONERS & DENTISTS COUNCIL 2ND RESPONDENT

DR ROBERT MENDONSA 3RD RESPONDENT

AIC CURE INTERNATIONAL HOSPITAL 4TH RESPONDENT

RULING

1. By a Notice of Motion dated 1/11/23 the Applicant sought an order that this Honourable Court be pleased to grant leave to appeal out of time against the ruling dated 18/9/2023 in the Preliminary Inquiry Committee case No. 68 of 2018, in the matter of Medical Practitioners and Dentists Act Chapter 253 Laws of Kenya.
2. The application is based on the grounds as appear on the face of the application and the depositions in the Supporting Affidavit of the Applicant sworn on 1/11/2023.
3. In opposition the 3rd and 4th Respondents filed grounds of opposition dated 25/1/2024 contending that the Kenya Medical Practitioners & Dentists Act has no provision for extension of time to lodge appeals hence this court lacks jurisdiction to grant the proposed orders by dint of Section 20(9) of the Act.
4. The court has considered the grounds of opposition and the supporting affidavit of the Applicant.



5. Section 20 (6) of the *Medical Practitioners and Dentists Act* Cap 253 provides that-
 - “Any party aggrieved with the ruling of the council has a right to appeal to the High Court within 30 days upon delivery of the ruling.”
6. The impugned ruling was delivered on 18/9/2023 and the Applicant filed the Memorandum of Appeal on 1/11/2023 with a delay of 14 days. The Applicant contends that the delay was occasioned by the 1st and 2nd Respondents by their failure to serve him with notice of the delivery of the ruling and or providing the ruling to him.
7. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, the Supreme Court set down the principles for extension of time, as follows:-
 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. On the issue of delay, Mohammed JA. (as he then was) held as follows in *George Kagima Kariuki & 2 Others v George M. Gichimu & 2 Others* [2014] eKLR: -
 - “... A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
9. In the case of *Ivita -vs- Kyumbu* (1984) e KLR and *Mwangi S. Kimenyi -vs- A.G & Another* (2014) e KLR the court held that unless extension of time to file a pleading occasions injustice to the opposing party, and the delay is sufficiently explained, it ought to be granted.
10. The Applicant has, in the courts view satisfactorily explained the delay. No injustice or prejudice has been demonstrated to the court by the Respondents, nor does the court find any injustice that grant of the orders sought would occasion to them.
11. The Applicant herein states that he was denied his right to be heard as enshrined under Article 50 (2) of *the Constitution* and his right to a fair trial as provided for under Article 25 (c) of
12. In the case of *John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation)* [2015] eKLR as follows:
 - The fundamental principles of justice are enshrined in the entire Constitution and specifically in Article 159 of *the Constitution*. Article 50 coupled with article 159 of *the Constitution* on right to be heard and the constitutional desire to serve substantive justice to all the parties, respectively, constitutes the defined principles which should guide the court



in making a decision on such a matter of reinstatement of a suit which has been dismissed by the court.”

13. For the foregoing the Applicant’s application dated 1/11/2023 is allowed. The Memorandum of Appeal shall be filed and served within 7 days, and the Record of Appeal within 60 days of this ruling.

Costs of the application shall abide by the outcome of the appeal.

Orders accordingly

DELIVERED DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF OCTOBER 2024.

JANET MULWA

JUDGE

