



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT MISC CASE NO. E466 OF 2020**

**NAOMI WANGUI MWANGI.....APPLICANT**

**VERSUS**

**KENYA MEDICAL PRACTITIONERS**

**& DENTISTS COUNCIL.....1<sup>ST</sup> RESPONDENT**

**DR. B. MONDA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application dated 16<sup>th</sup> October, 2020 seeks orders **that this Honourable court be pleased to enlarge time to file an Appeal against the ruling delivered by the 1<sup>st</sup> Respondent on 30<sup>th</sup> October, 2019 in Preliminary Inquiry Committee Case No. 14 of 2018.**

2. The application is premised on the grounds dated on it's face and the supporting affidavit. The Applicant is dissatisfied with the ruling of the Preliminary Inquiry Committee of the Medical Practitioners and Dentists Council and wishes to Appeal. The delay in filing the Appeal is stated to be due to late knowledge on 17<sup>th</sup> March, 2020 of the delivery of the ruling and further due to the outbreak of the COVID-19 Pandemic.

3. The 1<sup>st</sup> Respondent filed a replying affidavit in opposition to the application. It is stated that the ruling of the committee was forwarded to the Applicant's Advocates by way of registered post. That the explanation given by the Applicant regarding the outbreak of the COVID-19 pandemic is unreasonable. That the application has been filed after inordinate and inexcusable delay of 11 months. That the Applicant has failed to specifically explain the difficulties she faced in her bid to instruct her Advocates. It is further contended that the intended Appeal has no chances of success.

4. The application is opposed by the 2<sup>nd</sup> Respondent as per the grounds of opposition dated 22<sup>nd</sup> February, 2021 which state that:

**1. Said ruling was delivered on 30<sup>th</sup> October, 2019 and made available to all parties including the Applicant's Advocates at the material time, Prof. Kiama Wangai & Co. Advocates, in January 2020, a period of nine (9) months prior to filing of this application.**

**2. The claimant took no step/s whatsoever after learning of the ruling to ensure that time within which to Appeal, being end of February 2020 before the onset of Covid-19, did not lapse.**

**3. The application has been brought under irrelevant provisions of the law.**

**4. The validity of the Applicant's Supporting Affidavit dated 16<sup>th</sup> October, 2020 is challenged.**

**5. The Applicant after losing in Pic Case No. 14 of 2018, Prof. Kiama Wangai & Co. Advocates On Behalf of Naomi Wangui Mwangi – Vs- Dr. Brigid Monda & The Nairobi Hospital and In Nairobi CMCC No. 3468 of 2018, Naomi Wangui Mwangi – Vs- Dr. B. Monda & Nairobi Hospital decided to try her luck by filing this application.**

**6. The Applicant filed an Appeal being Nairobi HCCA No. 148 Of 2020, Naomi Wangui Mwangi –Vs- Dr. B. Monda & The Nairobi Hospital, on 19<sup>th</sup> March, 2020, and to date almost one (1) year later, she has not taken any steps to prosecute the said Appeal.**

**7. Under the circumstances, it is evident that the Applicant is bent on clutching on any straws available in a bid to remain afloat from a sinking ship and does not merit this court's discretion nor any of the reliefs sought.**

**8. The application is brought in bad faith, is vexatious, an afterthought and ought to be dismissed with costs to the Second Respondent.**

5. The 2<sup>nd</sup> Respondent also filed a replying affidavit essentially supporting his grounds of opposition.

6. I have considered the application, the responses and the submissions filed by the respective counsel for the parties.

7. On enlargement of time, the principles applicable were set out by the Supreme Court of Kenya in the **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** as follows:

**“This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of such discretion:**

**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; and**

**7. Whether in certain cases, like election petitions, public interest should be consideration for extending time.”**

8. The Applicant's explanation that she became aware of the delivery of the ruling on 17/3/2020 has been countered by the affidavit sworn by the 1<sup>st</sup> Respondent which in paragraph number 14 reflects that the ruling was forwarded to the Applicant's Advocates vide letter dated 8/11/2019 which was sent by way of registered post. This evidence remains uncontroverted by the Applicant. I therefore hold that the Applicant's Advocates were aware of the ruling. The delay in filing the instant application is inordinate and has not been satisfactorily explained. The outbreak of the COVID – 19 pandemic came long after the time within which to Appeal had lapsed.

9. With the foregoing, I find no merits in the application and dismiss the same with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF NOVEMBER, 2021**

**B. THURANIRA JADEN**

**JUDGE**