



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mokaya v National Police Service & 2 others (Civil Application  
E263 of 2024) [2025] KECA 191 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KECA 191 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E263 OF 2024  
AO MUCHELULE, JA  
FEBRUARY 7, 2025**

**BETWEEN**

**JACKLINE PAMELA MOKEIRA MOKAYA ..... APPLICANT**

**AND**

**THE NATIONAL POLICE SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> RESPONDENT**

*(An application to file an appeal out of time against the judgment and  
decree of the Employment and Labour Relations Court of Kenya at Nairobi  
(Rika, J.) dated 29th September 2023 in ELRC Petition No. E018 of 2018)*

**RULING**

1. The applicant, Jackline Pamela Mokeira Mokaya, was a policewomen employed by the National Police Service, the 1<sup>st</sup> respondent. On the allegation that she had aided a prisoner to escape on 16<sup>th</sup> April 2010 at Tigoni Principal Magistrate's Court where she was a court orderly, she was charged under Orderly Room Proceedings on 10<sup>th</sup> January 2011 with the offence of engagement in an act prejudicial to good order and discipline. She was dismissed from police service on the same date. She was subsequently charged at the Principal Magistrate's Court at Kikuyu with aiding a prisoner to escape. She pleaded not guilty, was tried and acquitted on 24<sup>th</sup> July 2014. She appealed internally against the decision, asking to be reinstated now that she had been acquitted. The appeal was dismissed.
2. The applicant filed a petition before the Employment and Labour Relations Court (ELRC) claiming that her fair labour rights had been violated and that the orderly room proceedings did not meet the constitutional threshold of a fair hearing. She sought to be reinstated, among other prayers. The



petition was defended. On 29<sup>th</sup> September 2023, the petition was found not merited and was dismissed with no orders as to costs.

3. The applicant was aggrieved by the decision and on 5<sup>th</sup> October 2023 filed a notice of appeal. She did not follow it up with filing a memorandum and record of appeal. This went against Rule 118 of the Court of Appeal Rules, 2022 that required her to file the appeal within 60 days.
4. By the present application dated 13<sup>th</sup> March 2024, the applicant sought the extension of time to file and serve the memorandum and record of appeal out of time against the judgment and decree of the ELRC. The application was brought under Rule 4 of the Rules, Sections 3, 3A and 3B of the Appellate Jurisdiction Act and Article 159(1) and (2)(a) and (b) of the Constitution. The applicant's reason for the delay in filing the appeal within time was that her then counsel on record wrote a letter requesting for proceedings. In the meantime, she proceeded for her December festivities. She later on came to learn that the counsel had not filed the appeal as he had been taken ill from a chronic condition that had disabled him. She was forced to look for new advocate who filed the present application. She annexed a draft memorandum of appeal in which several grounds were raised challenging the findings of the superior court. She contends that the intended appeal raises arguable grounds.
5. The respondents did not file a replying affidavit or grounds of opposition to oppose the application. The applicant filed written submissions. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents, the Inspector General of Police and the Honourable The Attorney General, filed written submissions to answer the submissions of the applicant.
6. This Court has the jurisdiction under Rule 4 of this Court's Rules to extend time. This jurisdiction entails the exercise of the Court's discretion. The Court will consider the period of delay, the explanation for the delay; whether, in allowing the application, the respondent will be prejudiced; whether the application has been brought within undue delay; and whether the intended appeal has any prospects of success; among other considerations - (See Nicholas Kiptoo Arap Salat v IEBC & 7 Others [2014] eKLR; Leo Sila Mutiso v Hellen Wangari Mwangi [1999] 2EA 231).
7. The impugned judgment was delivered on 29<sup>th</sup> September 2023. The notice of appeal was timeously filed on 5<sup>th</sup> October 2023. The applicant states that in December she went to celebrate, as it were. She knew or ought to have known that 60 days had begun to run. She does not say what happened between 5<sup>th</sup> October 2023 and December when she went for the festivities. She then does not say when, after the festivities, she found out that her then counsel was unwell, and how long it took her to instruct the new counsel. In such an application, every period of delay has to be reasonably explained. In all, there was over 5 months of delay in bringing the application. I find that delay was long, in the circumstances, and has not been satisfactorily explained. She may have an arguable appeal, but it must be remembered that timelines and timeliness serve, and contribute to, the fair administration of justice.
8. In conclusion, I find no reason to exercise my discretion in favour of the applicant. I dismiss the application and make no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**A. O. MUCHELULE**

.....

**JUDGE OF APPEAL**

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

Signed



**DEPUTY REGISTRAR.**

