



EN & 6 others v Attorney General & another (Civil Application E277 of 2023) [2024] KECA 380 (KLR) (28 March 2024) (Ruling)

Neutral citation: [2024] KECA 380 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E277 OF 2023
PO KIAGE, JA
MARCH 28, 2024**

BETWEEN

**EN 1ST APPLICANT
SN 2ND APPLICANT
SKM 3RD APPLICANT
MA 4TH APPLICANT
MR 5TH APPLICANT
JW 6TH APPLICANT
KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV & AIDS
(KELIN) 7TH APPLICANT**

AND

**THE ATTORNEY GENERAL 1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 2ND RESPONDENT**

(An application for extension/enlargement of time within which to file and serve the record of appeal against the judgment and/or orders of the High Court Constitutional & Human Rights Division at Nairobi (Ong’udi, J.) dated 20th December, 2022 in Petition No. 447 of 2018)

RULING

1. The motion dated 5th June 2023 by the applicants herein prays that time be enlarged or extended for them to file and serve the record of appeal against the judgment of the High Court (Ong’udi, J.) delivered on 22nd December 2022.



2. In the grounds on its face and in the supporting affidavit sworn on 5th June 2023 Nyokabi Njogu, the Legal Counsel and Head of Strategic Litigation of the 7th applicant on behalf of all the applicants, it is explained that shortly after judgment was delivered on 20th December 2022, the applicants on 23rd December 2022 filed a notice of appeal and also applied for typed copies of proceedings. The same were prepared and ready on 28th February 2023 but the applicants were never notified. They only became aware of their readiness for collection on 19th May 2023 upon perusing the court file. Even though they immediately applied for and collected the proceedings and received certificate of delay on 30th May 2023, they were time-barred, hence this application.
3. Having perused this matter and considered the explanation given, I am inclined to exercise my discretion in their favour especially as I have not seen any opposition to the application. They filed their notice of appeal timeously and applied for proceedings with alacrity. I have no reason to doubt their assertion that they were not notified when the proceedings were ready on 28th February 2023 and only became aware of such readiness when they perused the file on 19th May 2023 and immediately collected them. I do not see their conduct as that on an indolent party and, their explanation for the delay being plausible, I allow myself to be persuaded thereby, and therefore allow the application as prayed.
4. The applicants shall file and serve the record of appeal within ten (10) days of this Ruling.
5. The costs shall be in the intended appeal. Order accordingly.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH, 2024.

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

