



Mbogho v National Water Conservation & Pipeline Corporation (Civil Application E516 of 2023) [2024] KECA 982 (KLR) (26 July 2024) (Ruling)

Neutral citation: [2024] KECA 982 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E516 OF 2023
S OLE KANTAI, JA
JULY 26, 2024**

BETWEEN

MIRIAM CHARI MBOGHO APPLICANT

AND

NATIONAL WATER CONSERVATION & PIPELINE CORPORATION RESPONDENT

(An application for leave to appeal out of the stipulated time against the Ruling of the Employment and Labour Relations Court (Nduma, J.) dated 2nd June 2022 in ELRC Cause No. 878 of 2013)

RULING

1. The applicant Miriam Chari Mbogho has by Motion brought under “Section 4 of the [Appellate Jurisdiction Act](#)” amongst other provisions of law prays in the main that I be pleased to enlarge time within which to lodge Notice of Appeal and Memorandum of Appeal; that Appeal Number E850 of 2023 Miriam Chari Mbogho v National Water Conservation & Pipeline Corporation filed in court on 26th October, 2023 be deemed as properly filed and served and that costs of the application be provided for. In grounds in support of the application and in her affidavit it is stated, inter alia that the impugned ruling was delivered on 2nd June, 2022; that a Notice of Appeal was taken out on 6th June, 2022 and an application for a copy of the order, ruling and proceedings were ready and paid for on 18th October, 2023; that delay in preparation and lodgment of appeal was “... due to the relevant documents by court” (sic) and that the Deputy Registrar has issued a Certification of Delay. The applicant further says that she sued the respondent for unfair and unlawful termination of employment where the trial judge gave judgment in her favour being 12 months’ salary compensation (Kshs.1,423,260); unpaid reimbursable claims (Ksh.712,484) and she was granted any benefit that she had forfeited by the fact of



the unlawful summary dismissal including pension or gratuity whichever is applicable. She was given costs of the suit. She says that the judgment:

“...had an arithmetical err (sic) in the computation of unpaid reimbursement claims. The judge awarded Ksh.712,484/= instead of Kshs.793,161/= thereby by (sic) left out Kshs.80,677/= due and payable (attached herewith and marked MCM-1 is a true copy of the said judgment).”

2. That she instructed her lawyers to apply to the trial court for review of the judgment on two accounts – correction of an arithmetical error on the face of the record and computation of other benefits that were forfeited by her by the fact of the unlawful summary dismissal; the lawyers filed an appropriate application where the trial Judge in a ruling delivered on 2nd June, 2022 corrected the arithmetical error in the judgment by substituting the sum of Kshs.712,484 for Kshs.793,161 but dismissed the other prayers. The dismissed prayer was for an award of Kshs.54,898,849.60 which comprised the prayer for any benefit that she had forfeited by the fact of dismissal.
3. The applicant filed Notice of Appeal which was served on the respondent and a letter bespeaking proceedings was written to Court on 6th June, 2022 but it was not until 18th October, 2023 that the lawyers received an invoice from the court and that on the same day court fees was duly paid. The trial court issued a Certificate of Delay certifying the period it had taken to prepare proceedings which were received outside the time stipulated for filing an appeal.
4. I have seen Notice of Appeal and letter bespeaking proceedings which is duly copied to M/s Nyamu & Nyamu Advocates on record for the respondent. I have also seen follow up letters by advocates for the applicant to Court and Certificate of Delay issued on 19th October, 2023 showing that it took from 6th June, 2022 to 19th October, 2023, a period of 500 days, to prepare proceedings. I have also seen draft Memorandum of Appeal.
5. There is no replying affidavit from the respondent. I note Hearing Notice that indicates that the firm of Nyamu & Nyamu Advocates for the respondent were served on 3rd July, 2024 at 1.58 p.m. for hearing of the Motion.
6. Neither side filed written submissions which they were asked to do within limited time in the said hearing notice.
7. The principles that apply in an application of this nature are well known and were well captured in the oft-cited case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are first, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted."
8. Ruling intended to be appealed was delivered on 2nd June, 2022. The applicant indicated her intention to appeal by filing an appropriate notice on 6th June, 2022 and on the same day applied for proceedings to enable an appeal to be lodged. Those documents were served on the respondent. There is a Certificate of Delay issued on 19th October, 2023 showing how long it took to prepare the proceedings. The motion is dated 18th October, 2023, a day before Certificate of Delay was issued – it seems that the applicant had prepared the application even before the said certificate was issued. So there is no



delay. The reason given for delay is that proceedings took some time to be prepared by the trial court. This explanation is reasonable.

9. I have seen draft memorandum of Appeal where 7 grounds of appeal are set out. They are reasonable grounds which should be argued on appeal.
10. The respondent was notified of the applicant's intention to appeal and cannot be prejudiced in any way by my grant of leave.
11. The applicant informs in the Motion that an appeal being Civil Appeal E850 of 2023 was filed on 26th October, 2023 and served. I extend time and now deem that appeal to have been properly filed and served. Costs of the Motion will be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

