



Speaker, County Assembly of Laikipia & another v Mwangi & another (Civil Application E079 of 2024) [2024] KECA 1442 (KLR) (18 October 2024) (Ruling)

Neutral citation: [2024] KECA 1442 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E079 OF 2024
S OLE KANTAI, JA
OCTOBER 18, 2024**

BETWEEN

THE SPEAKER, COUNTY ASSEMBLY OF LAIKIPIA 1ST APPLICANT

LAIKIPIA COUNTY SERVICE BOARD 2ND APPLICANT

AND

FRANCIS CHUBI MWANGI 1ST RESPONDENT

PROACTIVE TEAM LAIKIPIA COMMUNITY BASED ORGANIZATION 2ND RESPONDENT

(An application for extension of time to file and serve notice of appeal from the Ruling of the Employment and Labour Relations Court at Nyeri (O.N. Makau, J.) dated 19th July, 2014 in E.L.R.C Petition No. E019 of 2023)

RULING

1. The applicant, The Speaker, County Assembly of Laikipia and Laikipia County Service Board pray in the Motion on notice said to be brought under rules 4, 5 and 53 of the *Court of Appeal Rules* and Article 158 of the *Constitution* that they be granted leave to file notice of appeal and a memorandum of appeal out of time from the decision / ruling of Makau, J. delivered on 19th July, 2024 in Nyeri ELRC Court Petition No. E019 of 2023 and that notice of appeal and memorandum of appeal attached be deemed as properly filed. The rest of the prayers are not within the province of a single judge. The motion is supported by grounds on its face and by a supporting affidavit of Hon. Lantano Nabaala where it is said amongst other things that the Judge delivered a ruling where he dismissed the applicants' preliminary objection dated 18th January, 2024; that preliminary objection related to a question of the court's jurisdiction and the respondents capacity to originate the petition; that the petition challenged the establishment of the office of Deputy Clerk in charge of administrative services; that the respondents were neither employers nor employees and had no capacity to lodge the petition;



that the respondents had earlier filed Nyeri ERLC Petition No. E014 of 2024 which was still pending in Court; that Nanyuki High Court Petition No. E001 of 2024 was also still pending in Court; that if all those matters are allowed to proceed without the intervention of this Court there is likelihood of different outcomes which would embarrass the courts; that delay in bringing this application is minimal seeing that the impugned ruling was delivered on 19th July, 2024 where the applicants had to change their lawyers. The applicants have attached in draft notice of appeal and a memorandum of appeal where the applicants intend to appeal against the whole decision. There are 8 grounds of appeal listed in draft memorandum of appeal.

2. There is a replying affidavit by the 1st respondent Francis Chubi Mwangi who says in material part that the applicants have not advanced any good reason for delay in filing notice of appeal within the prescribed time; that they are not aware of the case filed at the High Court of Kenya at Nanyuki; that the application is frivolous and an abuse of Courts time; that the application should be dismissed with costs.
3. There is a further affidavit of Hon. Lantano Nabaala who repeats what he had already stated in the supporting affidavit adding that procuring new advocates required consent and approval of the County Public Service Board; that three petitions filed at the High Court relate to the same issue regarding establishment of an office of a Deputy Clerk of the County.
4. I had seen and considered written submissions filed on behalf of both sides to the application.
5. The principles that apply in an application for leave to extend time are well settled and were set out in the oft-cited case of *Leo Sila Mutiso vs. 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.”

6. I note that ruling intended to be appealed was delivered on 19th July, 2024. The Motion before me is dated 3rd September, 2024, about 6 weeks after the date of the ruling. The applicants say that delay in lodging a notice of appeal was occasioned by procedures that had to be undertaken by the County Government to procure the services of a new law firm to represent the applicants. I think that this is a reasonable explanation. There is no inordinate delay.
7. I have seen draft Memorandum of Appeal and I think there are reasonable grounds of appeal raised.
8. I cannot in the circumstances see how the respondents would be prejudiced if leave to appeal out of time is given to the applicants.
9. I exercise my discretion and extend time to the applicants to appeal out of time. Let notice of appeal be lodged within ten (10) days of today. Costs of the Motion will be in the appeal.

DATED AND DELIVERED AT NYERI THIS 18TH DAY OF OCTOBER, 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

