



**Gitau v Teachers Service Commission (Civil Application E115 of 2024)  
[2024] KECA 1894 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1894 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E115 OF 2024  
A ALI-ARONI, JA  
DECEMBER 19, 2024**

**BETWEEN**

**GEORGE KAMWARO GITAU ..... APPLICANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

*(An application for an extension of time to file and serve a notice of appeal and record of appeal out of time from the Judgment of the Employment and Labour Relations Court at Nyeri (Makau, J.) delivered on 31st July 2024i in)*

**RULING**

1. Before the court is a notice of motion dated 15<sup>th</sup> October 2024 brought under rules 4, 39, 42, and 43 of the Court of Appeal Rules seeking the enlargement of time within which to file the notice of appeal and record of appeal out of time.
2. The application is predicated on the grounds on the face of the application and the applicant's affidavit sworn on 15<sup>th</sup> October 2024, where he avers that he filed an employment matter against the respondent in Murang'a, which was later transferred to the Employment and Labour Relations Court in Nyeri as Petition No. 1 of 2022; the case proceeded and judgment delivered on 31<sup>st</sup> July 2024; the decision of the court aggrieves him and the time within which the appeal was to be filed has lapsed hence the prayers sought; that he was financially strained and not able to prefer the appeal on time; no prejudice will be occasioned to the respondent if the application is allowed and the delay is not inordinate; he has an arguable appeal and in the absence of the order for an extension of time to file and serve the same he shall suffer irreparable loss.
3. The application is opposed through the replying affidavit of one Antonina Lentoijoni, the director in charge of the Teacher Staffing Directorate at the respondent institution, sworn on behalf of the respondent. She deposes that on 31<sup>st</sup> July, 2024, judgment in Nyeri ELRC Petition No. 1 of 2022



was delivered in favour of the respondent; the applicant has always maintained legal representation in the matter; hence, the fact of the date of delivery of judgment and the procedural steps that would ordinarily follow the reading of the judgment were known or ought to have been known by the applicant or his counsel; the application for leave to appeal out of time is, therefore, not justified, judgment having been delivered when the applicant had counsel on record; there has been no demonstration that extraordinary circumstances impeded him or his counsel from acting; the allegation that failure to appeal within the stipulated time was occasioned by “harsh economic times” is far-fetched as the applicant is a retired teacher and draws a monthly pension.

4. Further it is deposed that the applicant has failed to demonstrate the alleged financial difficulty; the drawing and service of a notice of appeal as an indication of the intention to appeal does not call for any considerable resources, financial or otherwise; to this end, the respondent restates that the excuse or rationale by the applicant to explain his indolence in this matter is merely an afterthought and does not serve to explain the delay; the applicant has misconstrued the court’s discretion to extend the time for filing an appeal; he has not laid or presented sufficient reasons to enable the court to exercise discretion in his favour; neither has he demonstrated that he has reasonable grounds for appeal with a high probability of success; the delay on the applicant’s part is inordinate and was occasioned by the applicant’s indolence and indecision and the inadvertent omission to file the notice of appeal and the letter requesting proceedings, on the applicant’s part should not be visited upon the respondent.
5. There are no submissions filed by the applicant. Learned counsel for the respondent filed submissions dated 28<sup>th</sup> November 2024, wherein he submits that; the threshold for granting the orders sought has not been met; the applicant’s casual reference to “harsh economic situation” to explain his failure to file the notice of appeal within the stipulated period is a farfetched reason that cannot hold or persuade the court to find in his favor; the court should take judicial notice that the applicant is a retired teacher drawing a monthly pension and hence is not a pauper as he would want the court to perceive him. In support, learned counsel relied on the Supreme Court case of *Mombasa County Government vs. Kenya Ferry Services & Another* [2019], where the court held that where there was a reason for the delay, the same should be expressed to the court’s satisfaction. The respondent submits that the allegation of harsh financial difficulty on the applicant’s part should have been sufficiently explained and demonstrated.
6. Learned counsel equally referred to the cases of *Zarny Zabrya & Another vs. Shalom Levi* [2018] eKLR and *Lither Peter Muia & Another vs. Zuena Ngando Kababu* [2019] eKLR, where the court held that any allegation or justification for the delay must be backed or verified by evidence.
7. I have considered the application and the grounds in support thereof, the replying affidavit, the submissions by the respondent’s counsel and case law cited. The discretion that I am called upon to exercise in the determination of this application is provided for under rule 4 of the *Court of Appeal Rules* which states:

“The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”



8. In the case of *Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees*, Civil Application No. 190 of 2019 this Court stated:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.” (Emphasis added)

9. The reason(s) for the delay in filing an appeal must be plausible and satisfactory. To this effect, this Court in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR stated:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

10. In this instance, the only reason the applicant gives for the delay in filing his appeal is that he is indigent, a fact that the respondent challenged, given that the filing of a notice of appeal and request for proceedings and judgment are minimally charged, yet the applicant is a pensioner.

11. The applicant did not deny that he is a pensioner or prove that he is indeed indigent as claimed and incapable of meeting the minimal costs of filing a notice of appeal and paying for the proceedings and judgment. Secondly, rule 120 of the *Court of Appeal Rules* allows any indigent litigant to apply for a waiver of fees, meaning that the applicant cannot use his circumstances as a justification for the delay.

12. In the end, I do not find the reason advanced for the delay satisfactory. I decline the application with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024.**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

