



REPUBLIC OF KENYA



KENYA LAW
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**Kegicha v National Police Service Commission (Civil Application
E136 of 2021) [2023] KECA 687 (KLR) (9 June 2023) (Ruling)**

Neutral citation: [2023] KECA 687 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E136 OF 2021
PO KIAGE, F TUIYOTT & JM NGUGI, JJA
JUNE 9, 2023**

BETWEEN

JOSEPHINE NYAKARA KEGICHA APPLICANT

AND

NATIONAL POLICE SERVICE COMMISSION RESPONDENT

(A reference from the decision of Mumbi Ngugi JA of 13th May, 2022)

RULING

1. This is a reference from the decision of Mumbi Ngugi JA brought under rule 57 of the [Court of Appeal Rules, 2022](#).
2. In her decision of May 13, 2022, the learned single Judge dismissed the application of Josephine Nyakara Kegicha (the applicant) in which she sought leave of Court to file a Record of Appeal out of time against the decision of the ELRC dated March 7, 2019. In dismissing the application, the learned single Judge held:

“ 10. The applicant’s own averments contradict her contention that her Advocate was not in Court. She avers that she filed a notice of appeal on March 18, 2019, and applied for the proceedings on the same date. Further, that the proceedings were ready and were received by the applicant on April 15, 2019. Yet, she did not file an application for extension of time till September 2021, when she now raises another argument- her impecunious state.

11. The applicant has not, in my view, given plausible reasons for her failure to file her appeal on time. She, in fact, seems intent on deceiving this Court with the contradictory reasons that she advances. I am constrained to agree with the respondent that in this case, there is no basis for the Court to exercise its



discretion in favour of the applicant. I need not enter into a consideration of the possibility of success of her appeal, save to say that having read the decision of the trial court and her grounds of appeal set out in the Memorandum of Appeal attached to her application, I have some serious reservations about the possibility of success.”

3. The applicant is dissatisfied with the decision of the learned single Judge and in arguing the reference before us relied on the submissions she made before the learned single Judge. In addition, she pleads that we exercise our discretion in her favour and grant her a chance to be heard on merits.
4. The respondent, too, relied on the submissions it made at the hearing of the application.
5. The application before the learned single Judge was for extension of time and was a plea for the exercise of a discretionary power. A plea that required the applicant to be honest and candid. In the body of her application, the applicant proffers grounds in support of her plea for extension, two of which are that her advocate was not informed of the date of judgment after the close of the case and no notice was issued either to the applicant or her advocate regarding the delivery of the judgment. In the affidavit in support of the application, the applicant shifts gear as to the reason for failing to keep the timelines. This time she blames it on her inability to raise fees for filing the appeal and for paying her advocate.
6. In the face of this inconsistent explanation, the learned single Judge was entitled to find that the applicant had given contradictory reasons and was intent on deceiving the Court.
7. Something else demonstrates the lack of candour on the part of the applicant. So as to counter the grounds on the face of the application, the respondent produced certified copies of the proceedings of superior court below which showed that a Mr. Mongeri, who represented the applicant in those proceedings, was in court on 17th July, 2008 when her petition was argued and delivery of judgment set for 17th January, 2019. On 17th January, 2019, counsel Ken Omollo held brief for Mr. Mongeri when judgment was rescheduled to 28th February, 2019. Judgment was not delivered on that day and again rescheduled to 7th March, 2018 but the rescheduling was done in the presence of counsel Odhiambo who held brief for Mr. Mongeri. On the date of judgment, 7th March, 2018, Mr. Odhiambo was present for Mr. Mongeri the advocate for the applicant. The accuracy of the proceedings was not challenged by the applicant. The court record does not bear out the applicant’s contention that her advocate was neither informed of the date of judgement nor present when delivered.
8. In the face of these observations it cannot be said that the learned single Judge “disregarded a relevant matter, regarded an irrelevant matter or acted on a misapprehension of evidence or applicable law” so as to justify interference with the exercise of her discretion (see *Simeon Okingo & 4 Others v Benta Juma Nyakako* [2021] eKLR).
9. We fully endorse the findings and eventual order of the learned single Judge and dismiss this reference with costs.

DATED AND DELIVERED AT KISUMU THIS 9TH DAY OF JUNE, 2023.

P.O. KIAGE

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

JOEL NGUGI

.....

JUDGE OF APPEAL

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

SIGNED

DEPUTY REGISTRAR.

