



**Nairobi Water and Sewerage Company v Nangole (Civil Appeal
(Application) E262 of 2023) [2023] KECA 852 (KLR) (7 July 2023) (Ruling)**

Neutral citation: [2023] KECA 852 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E262 OF 2023
HM OKWENGU, JA
JULY 7, 2023**

BETWEEN

NAIROBI WATER AND SEWERAGE COMPANY APPLICANT

AND

MARTIN NANGOLE RESPONDENT

*(Application for extension of time to file an appeal from the Ruling of
the Employment and Labour Relations Court at Nairobi (Gakeri, J.)
delivered on 15th February 2023 in ELRC Petition No. E138 of 2022)*

RULING

1. The applicant, Nairobi Water and Sewerage Company has filed a notice of motion dated April 13, 2023, under Rule 4 of the [Court of Appeal Rules](#), seeking orders inter alia:
 - “i That the Court deem fit to grant an order adopting the filed notice of appeal dated March 15, 2023 and filed on March 20, 2023, as proper and filed in good time.
 - ii. That the honorable court issue a stay of execution of the orders of the Employment and Labour Relations Court dated February 15, 2023 being the date of delivery of the ruling pending the lodging of the intended appeal against the said ruling.
 - iii. That the costs of this application be provided for.”
2. The applicant contends that the application has been filed without unreasonable delay, the award having been made on February 15, 2023. The applicant is apprehensive that if the respondent resumes employment as ordered by the employment court, it will be detrimental to it as the relationship between it and the respondent has broken down irretrievably. The applicant requested for a copy of



- the award, but did not receive the same in time and therefore decided to file the notice of appeal on March 20, 2023, which was after the statutory time provided. The applicant attributes the delay to the failure by the court to issue a copy of the ruling on time and the illness of the advocate who was handling the matter on its behalf. The applicant pleads that it has an arguable appeal as the trial court erred by failing to take into account evidence that the respondent Martin Nangole, was employed on fixed contract terms.
3. The applicant has also filed written submissions in which it has relied on [*Karny Zabarya & another v Shalom Levi*](#) Civil Application No 80 of 2018 and [*Transparency International Kenya vs Theresa Carlo*](#), Nairobi Court of Appeal No 81 of 2018, urging the court that it has a meritorious appeal and that time should be extended to enable it to pursue the same.
 4. A hearing notice was availed to us indicating that both the applicant and the respondent were served through their counsel with notices for the hearing of the motion. Nevertheless, the respondent did not file any written submissions.
 5. I have considered the applicant's motion, the affidavit in support, and the written submissions in support thereof. The application is brought under Rule 4 of the [*Court of Appeal Rules*](#), which gives this Court powers to extend any time provided by the [*Court of Appeal Rules*](#) or the Court for the doing of any act.
 6. In its application, the applicant has sought orders for stay of execution, in addition to extension of time. The prayer for stay of execution has been wrongly brought under Rule 4 of the [*Court of Appeal Rules*](#) which only deals with extension of time. Secondly, as a single judge, I have no powers to deal with an application for stay of execution, the same being an application reserved for the full bench of the Court under Rule 55(2) (b) of the [*Court of Appeal Rules*](#).
 7. As regards the application for extension of time, the applicant has rightly quoted [*Karny Zabarya & Another v Shalom Levi*](#). C., (*supra*) in which Koome JA, (as she then was) reiterated considerations that the Court ought to bear in mind in considering such an application. These include the length of the delay, the reasons for the delay, the possible prejudice, the conduct of the parties, and the need to balance the interest of a party who has a constitutionally underpinned right of appeal.
 8. The intended appeal is against a judgment that was delivered on February 15, 2023. The applicant has exhibited a notice of appeal dated March 1, 2023. It does not bear a date or signature of the Registrar of the superior court. In the supporting affidavit sworn by Monica Tuli, the applicant's acting director of Human Resource and Administration, she has not stated when the notice of appeal was filed, but in the grounds of appeal stated on the body of the motion, it is indicated that the applicant filed a notice of appeal on March 15, 2023. This means that the notice was filed 30 days after the impugned decision.
 9. The applicant explains that the notice of appeal was filed late because it was waiting to be supplied with a copy of the decision of the superior court. This is not a plausible reason as Rule 77(2) requires a notice of appeal to be lodged within 14 days from the date of the decision against which the appeal is lodged, and Rule 79(1) requires the intended appellant to serve the respondent within 7 days after lodging the notice of appeal. It is not a requirement for the applicant to be served with a copy of the ruling before lodging the notice of appeal. The provision to Rule 84 only allows exclusion of time for the computation of dates for filing the record of appeal where a copy of proceedings has been applied for. That proviso does not apply to the filing of a notice of appeal.
 10. As regards the applicant's explanation that the delay was also attributable to the illness of its advocate, the applicant has not given the name of the advocate nor has any details been given regarding the



advocate's ailment, for the Court to appreciate that he was indeed unable to take appropriate action with regard to the applicant's appeal.

11. As was stated by the Supreme Court in *Nicholas Kiptoo Arap Salat vs Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR:

- “ 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to the deserving party at the discretion of the Court;
2. A party who seeks for extension of time has a burden of laying a basis to the satisfaction of the Court”.

12. The applicant has merely made allegations regarding illness of its previous advocate but has failed to provide appropriate information in support of the alleged illness. The allegation does not provide a satisfactory explanation.

13. For the above reasons, I have no basis to exercise my discretion in the applicant's favour. The notice of motion dated April 13, 2023 is accordingly dismissed.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF JULY, 2023.

HANNAH OKWENGU

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

