



REPUBLIC OF KENYA



KENYA LAW
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Muriuki & 8 others v County Public Service Board of Meru & 2 others (Civil Application E053 of 2023) [2023] KECA 1641 (KLR) (27 October 2023) (Ruling)

Neutral citation: [2023] KECA 1641 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E053 OF 2023
AO MUCHELULE, JA
OCTOBER 27, 2023**

BETWEEN

**ERIC MURIUKI 1ST APPLICANT
ANN KANANU NATHAN 2ND APPLICANT
LUCY KAJUJU 3RD APPLICANT
NICHOLAS MUTEMBEI 4TH APPLICANT
SABINA KABEE M'BIRITHIA 5TH APPLICANT
PAUL MUTAI 6TH APPLICANT
VINCENT MAINGI 7TH APPLICANT
CHARITY KENDI 8TH APPLICANT
PATRICK MUTHURI 9TH APPLICANT**

AND

**COUNTY PUBLIC SERVICE BOARD OF MERU 1ST RESPONDENT
GOVERNOR OF MERU COUNTY 2ND RESPONDENT
COUNTY SECRETARY OF MERU 3RD RESPONDENT**

(Being an application for an extension of time to file the record of appeal out of time from the judgment of the Employment and Labour Relations Court of Kenya at Nyeri (D.K. Njagi Marete, J.) dated 9th March 2022 in E.L.R.C. Petition No. 6 of 2019)



RULING

1. Rule 4 of the Court of Appeal Rules, 2022 states that: -

“The court may, on such terms as may be 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.”

2. It is now trite that for this Court to extend time, which itself entails the exercise of an equitable and discretionary power, the applicant has to tender a reasonable explanation for the delay; the delay should not be inordinate; there should not be undue prejudice to be suffered by the respondent, if extension is allowed; the application should have been brought without delay; and, where the dispute has a public interest bearing, the Court should consider that (See Nicholas Kitoo Arap Korir Salat –v- IEBC & 7 Others [2014]eKLR; M/s Portraits Maternity –v- James Karanga Kobia, Civil Appeal No. 63 of 1997).
3. Each case is determined on its peculiar facts, with the Court balancing the interests of the applicant and those of the respondent.
4. On 9th March 2022 the Employment and Labour Relations Court of Kenya at Nyeri (D.K. Marete, J.) dismissed the applicants’ petition which claimed that they had been unlawfully terminated from employment and that their casual employee rights had been violated by the respondents. Each party had been asked to bear own costs in the matter.
5. The applicants say that they instructed their advocates M/s Muchomba Law Advocates to lodge a notice of appeal and the substantive appeal. This was because they had been aggrieved by the decision. On 5th September 2022 they learned that their instructions had not been carried out. They applied to the court for proceedings which were not supplied until 21st June 2023. On 26th June 2023 their new advocates Kuria Karatu & Co. Advocates filed the instant application. They blame their previous advocates for not heeding to their instructions to appeal, a failure they ask that should not be visited on them. They then blame the trial court for the delay in the processing of proceedings. Lastly, they deponed that their intended appeal raises arguable grounds. I have seen the amended draft Memorandum of Appeal.
6. Virginia Kawira Nkoroi, the Chief Executive Officer of the 1st respondent, filed a replying affidavit to oppose the application. Her case was that the applicants had been caught up by the inordinate delay of sixteen (16) months in bringing the application, and that the excuse given were not plausible. She stated that the applicants had been careless in not having followed up the matter to have a notice of appeal filed on time, and therefore this inaction could not be blamed on their advocates. Secondly, that there was no receipt from the trial court’s registry to show when it was that they paid for the proceedings. If there was delay, it was contended, there was no certificate of delay by the registry. Lastly, it was deponed as follows:-

“8. That the County Government of Meru shall suffer extreme prejudice if the application is allowed as the transgressions being sought to be re-litigated over by the applicants have been overtaken by circumstances and the payrolls harmonized and casual workers contracted by the County Government of Meru.



9. That the applicants were former casual workers of the default Meru Municipal Council whose contract of employment has lapsed and shall suffer no prejudice if orders sought are not allowed.”
7. The applicants did not seek to file a further affidavit to react to these averments contained in the replying affidavit.
8. I consider that the applicants had upto about 22nd March 2022 to file a notice of appeal, now that they say they sought to challenge the judgment of the ELRC. For them to do nothing until 5th September 2022 when they say they discovered that no notice of appeal had been filed, is to me a dilatory conduct that cannot be countenanced. This was their case, not their advocate’s, and reasonable conduct expected them to find out from the advocate, immediately 14 days were over, whether the notice of appeal had been lodged. Secondly, why wasn’t extension of time sought immediately upon the discovery?
9. The applicants’ supporting affidavit is silent on when exactly they approached the trial court for a certified copy of proceedings. Did they do by letter? Where is the copy of the letter? Did they pay for the typing of proceedings? Where is the receipt? Was there a delay in processing the proceedings? In my view, the fact that there is no certificate of delay would indicate that the proceedings were expeditiously provided.
10. In my considered estimation, the fifteen (15) months taken by the applicants to come to this Court to seek extension of time to appeal was long and inordinate, and the explanation given for the delay was neither reasonable nor plausible. This is not conduct that can merit the exercise of this court’s discretion in their favour.
11. Consequently, the application is dismissed with costs.

DATED AND DELIVERED AT NYERI THIS 27TH DAY OF OCTOBER 2023

A.O. MUCHELULE

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

