



Wanjohi & another v Barclays Bank of Kenya Limited (Civil Application E431 of 2021) [2022] KECA 376 (KLR) (25 February 2022) (Ruling)

Neutral citation: [2022] KECA 376 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E431 OF 2021
S OLE KANTAI, JA
FEBRUARY 25, 2022**

BETWEEN

DOUGLAS WAKIIHURI WANJOHI 1ST APPLICANT

JOSEPH GICHEHA WANYENJI 2ND APPLICANT

AND

BARCLAYS BANK OF KENYA LIMITED RESPONDENT

(Being an application for leave to appeal out of time from the Judgment of the Employment and Labour Relations Court of Kenya at Nairobi (Nzioki wa Makau, J.) dated 30th June, 2021 in ELRC Cause Nos. 833 & 834 of 2019)

RULING

1. The Motion is brought under rule 4 of the [Court of Appeal Rules](#) amongst other provisions of law and I am asked to be pleased to grant the applicants leave to file record of appeal out of time and/or allow extension of time to file an appeal against the Judgment delivered on 30th June, 2021 (Nzioki Wa Makau, J.). In grounds in support of the Motion and in a supporting affidavit of Owino Opiyo, the lawyer on record for the applicant it is said in essence that the Employment and Labour Relations Court (“ELRC”) dismissed the suit before it; that the applicants immediately applied for proceedings of that court and a copy of the Judgment; that proceedings and Judgment were not delivered to the applicant within the time specified for filing record of appeal; a notice of appeal had been filed indicating the applicants desire to appeal against the said Judgment; that if leave to extend time is not granted the applicant will be “...chased away from the seat of justice ...” and delay in filing record of appeal is not inordinate. It is further deponed in the affidavit that two separate claims were made at ELRC for unlawful and unfair termination; the suits were dismissed on 30th June, 2021; a Notice of Appeal was filed on 6th July, 2021 and proceedings applied for the previous day (5th July, 2021); typed proceedings were supplied by the court on 12th November, 2021 when 60 days for filing record of



appeal had expired. A Certificate of Delay was supplied by ELRC on 24th November, 2021 and that the intended appeal has merit.

I have not seen a replying affidavit.

2. A hearing notice served by the Deputy Registrar on 22nd February, 2022 to “[Particulars withheld]@yahoo.com and [Particulars Withheld]@fke-kenya.org” informed the parties of the hearing date and required them to file written submissions within time specified.
3. I have seen written submissions on behalf of the applicant and a list of authorities but none are filed for the respondent.
4. The principles that apply in applications for extension of time are well known and a good summary is to be found in the case of *Fakir Mohamed v Joseph Mugambi & 2 Others* Civil Application No. 332 of 2004 as follows:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi*, Civil Application No. NAI. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 496, *Major Joseph Mwereri Igweta v Murika Methare & Attorney General* Civil Application No. NAI 8 of 2000 (ur) and *Murai v Wainaina* (No. 4)1982 KLR 38.”

5. The applicants were dissatisfied with Judgments of ELRC and filed Notice of Appeal within the required time. I have seen correspondence by the applicants’ lawyer requesting for proceedings and a copy of Judgment from court. Proceedings and Judgment were not supplied to the applicants to enable them file record of appeal within the time specified by Court of Appeal Rules. This is confirmed by Certificate of Delay issued by ELRC. The applicants say that the appeal has merit and they should have the opportunity to ventilate it.
6. I am satisfied that the application has merit and I allow it. Let a Record of Appeal be filed within 30 days of today. I make no order on costs.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF FEBRUARY, 2022.

S. ole KANTAI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

