



**Muriuki v National Police Service Commission (Civil Application 106 of 2019) [2022] KECA 32 (KLR) (4 February 2022) (Ruling)**

Neutral citation: [2022] KECA 32 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION 106 OF 2019  
PO KIAGE, JA  
FEBRUARY 4, 2022**

**BETWEEN**

**BEATRICE WAMBURA MURIUKI ..... APPLICANT**

**AND**

**NATIONAL POLICE SERVICE COMMISSION ..... RESPONDENT**

*(An application for stay of execution and extension of time to file an Appeal from the Judgement and Decree of the Employment and Labour Relations Court at Kisumu (N. Nderi, J.) dated 7th March, 2019) in ELRC Petition No. 11 of 2018)*

**RULING**

1. Beatrice Wambura Muriuki, the applicant has moved the Court by a Motion dated 25th August, 2019, seeking the following orders;
  - a. THAT the Honourable court be pleased to grant leave to extend time for filing the Memorandum of Appeal herein.
  - b. THAT there be a stay of execution of the judgment/decree/orders of the Employment and Labour Relations Court sitting in Kisumu in Petition number 11 of 2018 (as consolidated with 12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27, 28,29 and 36 of 2018) pending the hearing and determination of the intended appeal.
  - c. (sic) prayer (b) repeated
  - d. THAT the Notice of Appeal filed on 19th March 2019 be and is hereby deemed to be within the time limit for filing (sic) Appeal.



- e. THAT the Memorandum of Appeal hereby attached be and is hereby deemed as filed.
2. On the face of it, this application is omnibus in nature as prayers (b) and (c), which are repetitive, are brought under Rule 5(2)(b) for an order of stay of execution, which is to be heard by a full bench, while prayers (a), (d) and (e) concern themselves with the application for extension of time under Rule 4, and ought to be heard by a single Judge. These distinct prayers, have different avenues for adjudication, and procedures to be adhered to, and therefore cannot be lumped together in one application. See, [Riccardo Fanelli & 2 Others -vs- Frigrieri Graziano \[2015\] eKLR](#).
  3. If I were to be firm and strictly apply the rules, I would strike out the application as incompetent due to its omnibus nature. However, I am bound to do substantive justice and therefore shall ignore prayers (b) and (c) and deal with the prayers (a), (d) and (e) that deal with extension of time.
  4. This being a Rule 4 application, I shall be guided by the appropriate principles, devised by this Court, to be applied in order to achieve a just decision. In the exercise of my discretion, which is free and unfettered, I am persuaded by the decision in oft cited *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi (1999) 2 EA 231* that the matters to consider are; first, the length of the delay; second, the reason for the delay; third (possibly) the chances of the appeal succeeding if the application is granted; and, fourth, the degree of prejudice to the respondent if the application is granted.
  5. The application is based on 10 grounds on the face of it and is supported by an affidavit sworn by the applicant. She deposed that the judgment was delivered in favour of the respondent on 17th March, 2019. Aggrieved by the decision, she instructed the firm of Henry Oduor & Company Advocates to lodge an appeal on her behalf. She paid their legal fees and the notice of appeal was promptly filed on 19th March, 2019. However, the said firm did not file the appeal and she only discovered this at the beginning of August, 2019, when the statutory timelines had already lapsed. She then instructed the firm of Wanjiku Mwaura & Company, who are currently on record, to lodge the appeal for her.
  6. The respondent filed a replying affidavit deposed by Joseph V. Onyango, its Chief Executive Officer. He opposed the application terming the delay as inordinate and offensive to the principle that litigation must come to an end. He criticized the applicant for failing to give a justifiable reason for the delay save for blaming her advocate, which is not convincing since the record shows that it was her failure to pay legal fees that caused the delay. He urged that the same be dismissed with costs.
  7. It is trite that there is no maximum or minimum length of delay set by the law, but anyone seeking this relief must satisfactorily explain the cause of the delay. A plausible and satisfactory explanation is the key that unlocks the Court's flow of discretionary favour. See [Andrew Kiplagat Chemaringo -vs- Paul Kipkorir Kibet \[2018\] eKLR](#).
  8. To my mind, the reason for delay proffered by the applicant is neither believable nor satisfactory. She blames her advocate for the delay yet she says she became aware of her advocate's error after four whole months. Considering that her career was at stake, I would expect her to be more vigilant in following up on the progress of her matter. Otherwise, it seems to me as though she gave instructions to her advocates and went to sleep only to discover the mistake when it was too late.
  9. Further, the email from her former advocate in response to a letter from her current advocates clearly indicates that she had not paid the requisite legal fees. They were demanding a total of Kshs. 35,200 as instructions and disbursements. This debunks her claim that her former advocate was squarely to blame for her woes yet it is her own failure to pay the required fees that contributed to the said delay. At



any rate, it brings into question her bona fides as a party who seeks a favourable exercise of discretion must be fully candid.

10. I have come to the conclusion that the delay was not only inordinate but also inexcusable. In the result I decline to grant the prayer to extend time and accordingly dismiss the application with costs.

**DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2022.**

**P. O. KIAGE**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

