



**Kegicha v National Police Commission (Civil Application  
136 of 2021) [2022] KECA 820 (KLR) (13 May 2022) (Ruling)**

Neutral citation: [2022] KECA 820 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION 136 OF 2021**

**M NGUGI, JA**

**MAY 13, 2022**

**BETWEEN**

**JOSEPHINE NYAKARA KEGICHA ..... APPLICANT**

**AND**

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

*(Being an application for extension of time to file and serve a Record of Appeal out of time from the judgment of the Employment and Labour Relations Court in Kisumu (Mathews N. Nderi J.) dated 7th March 2019 in Kisumu ELRC Petition No. 18 of 2018)*

**RULING**

1. In her application dated 27<sup>th</sup> September 2021, the applicant asks this Court to grant her leave to file a Record of Appeal out of time against the decision of the ELRC dated 7<sup>th</sup> March 2019. She also asks the Court to grant any order it deems just in the circumstances.
2. The grounds in support of the application are that the applicant was represented in the matter by an Advocate who was not informed on the date of the judgment. No notice was issued either to the applicant or her Advocate with regard to the delivery of the judgment. She intends to challenge the whole judgment and intends to file a notice of appeal.
3. In her affidavit in support of the application sworn on 27<sup>th</sup> March 2021, the applicant avers that on 18<sup>th</sup> March 2019, her Advocate did file a Notice of Appeal which was served on the respondent on 28<sup>th</sup> March 2019. That they requested for the proceedings on 18<sup>th</sup> March 2019 while filing the Notice of Appeal. They received the proceedings on 15<sup>th</sup> April 2019 and were ready to file the record of Appeal.
4. She further avers that she was, however, financially drained and was not able to raise even the fees to file the Record. She had now managed to raise the funds and was ready to file the Record of Appeal. She



had always been ready to file the record but the delay was occasioned by reasons beyond her control. Her appeal was arguable, raised triable issues, and has high chances of success.

5. The respondent filed an affidavit in opposition sworn by Mr. Joseph V. Onyango, its Chief Executive Officer, on 14<sup>th</sup> January 2022. Mr. Onyango avers that contrary to the applicant's contention in her application, her Advocate was present in Court when the judgment was delivered. All the parties had been informed on 28<sup>th</sup> February 2019 that judgment would be delivered on 7<sup>th</sup> March 2019. Further, that the applicant had not explained the over two-year delay between the date when she filed her Notice of Appeal on 18<sup>th</sup> March 2019 and the date of filing this application.
6. The parties hereto have filed written submissions which I have read and considered.
7. Rule 4 of the *Court of Appeal Rules* sets out this Court's discretion to grant extension of time. The factors which the Court should consider in determining whether or not to exercise its discretion in favour of a party were enunciated in the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (1999)2 EA 231, in which the Court stated as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay: secondly, the reason for the delay: thirdly (possibly), the chances of the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted”.
8. The decision that the applicant seeks to file an appeal against was delivered on 7<sup>th</sup> March 2019. The applicant's Counsel, as she avers in her affidavit, filed a Notice of Appeal on 18<sup>th</sup> March 2019. He also, according to the applicant, applied for the proceedings with a view to filing an appeal. The proceedings were ready and were collected on 15<sup>th</sup> April 2019. However, nothing else was done until the present application was filed on 27<sup>th</sup> September 2021. There was thus a delay in excess of two years in filing the present application.
9. How does the applicant explain the delay? In the grounds on the face of the application, the applicant alleges that the delay was due to the fact that neither she nor her Advocate were aware of the date of delivery of the judgment. In her affidavit in support of the application, she avers that she did not file the Record of Appeal as she did not have the finances to do so. Her averments are contradictory, and are controverted by the affidavit sworn on behalf of the respondent. Mr. Onyango has averred that the Advocate for the applicant was present when the judgment was delivered. Indeed, that he was in court on a mention on 28<sup>th</sup> February 2019 when the court indicated that it would deliver judgment on 7<sup>th</sup> March 2019.
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 18<sup>th</sup> March 2019, and applied for the proceedings on the same date. Further, that the proceedings were ready and were received by the applicant on 15<sup>th</sup> April 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.

12. I accordingly find no merit in the application dated 27<sup>th</sup> September 2021, and it is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT KISUMU THIS 13<sup>TH</sup> DAY OF MAY, 2022.**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

*I confirm that this is a true copy of the original.*

*SIGNED*

**DEPUTY REGISTRAR**

