



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**County Public Service Board Kitui v Kenya County Government Workers' Union (Civil Appeal (Application) 89 of 2018) [2022] KECA 1156 (KLR) (19 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1156 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) 89 OF 2018  
LK KIMARU, JA  
OCTOBER 19, 2022**

**BETWEEN**

**COUNTY PUBLIC SERVICE BOARD KITUI ..... APPLICANT**

**AND**

**KENYA COUNTY GOVERNMENT WORKERS' UNION ..... RESPONDENT**

*(Being an application to enlarge time within which the Applicants can file and serve Memorandum of Appeal and Record of Appeal against the Ruling and Orders of the Employment and Labour Relations Court at Nyeri (Ongaya, J.) dated 16th June, 2017 in E. & L. R. C. Cause No. 45 of 2016)*

**RULING**

1. The applicant has filed an application pursuant to rule 4 of the [Court of Appeal Rules](#) seeking to have the time by which it is required to file and serve the memorandum and record of appeal extended. The applicant further prayed that the memorandum of appeal and the record of appeal filed on June 27, 2018 be deemed to be properly on record.
2. The grounds in support of the application are stated on the face of the application and supported by the annexed affidavit of Nicholas Weru, the advocate for the applicant. The applicant explained that the delay in filing the memorandum and the record of appeal in time was occasioned by the time it took the court to type the proceedings and prepare the certificate of delay. Thereafter, the delay was caused by miscommunication between the applicant's advocates and the court registry in regard to the filing fees to be paid. The applicant contends that the delay was not inordinate and therefore the court should exercise its discretion in their favour and allow the application as prayed.
3. The application is opposed. The respondent contends that the period of delay is inexcusable. The respondent noted that it took over a year before the applicant filed the said memorandum and the record of appeal. The period between the time the applicant was issued with a certificate of delay and



the time they lodged the memorandum and the record of appeal was unconscionable. The respondent observed that the separate periods of delay, taken cumulatively, proves that the applicant has not been diligent and therefore should not benefit from the exercise of discretion by this court. Further, the respondent stated that the intended appeal to be filed was not arguable since the subject of the appeal before the Employment and Labour Relations Court continues to remain outstanding thus prejudicing the Respondent. In the premise therefore, the respondent urged the court to disallow the application and dismiss it with costs.

4. This court has unfettered discretion when considering whether or not to extend time for a party to an appeal to comply with the timelines prescribed by the *Court of Appeal Rules*. However, overtime, the court has come up with some of the considerations which the court is required to have in mind when exercising this discretion.
5. For instance in *Fakir Mohamed v Joseph Mugambi & 2 others* [2005] eKLR, the court held thus:

“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 time limit to the numbers of factors the court would consider so long as they are relevant. The period of delay, the reason for delay, (possible) 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 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 factor”. [Emphasis supplied]
6. In the present application, although the Respondent has objected to the application essentially on the broad ground that the delay was inordinate and that granting the application would prejudice the respondent, this court, upon evaluating rival facts of this application reached the conclusion that the applicant has made a case for this court to exercise its discretion in their favour. This court is satisfied by the explanation given by the applicant for the delay in filing the memorandum and record of appeal in time. The period of one year delay that the respondent refers to is the period that was out of the control of the applicant because that is the period that the proceedings were being typed by the court. The significant period that may be attributed to the applicant is the period from the time that applicant obtained the certificate of delay from the deputy registrar this court to the time the applicant filed the memorandum and the record of appeal. As correctly observed by the respondent, that period is respectively 15 and 42 days which is not such a long period as to amount to actual prejudice to the respondent. The Respondent will not suffer any undue prejudice because they will have an opportunity to ventilate their grounds of opposition to the appeal during the hearing of the appeal. Any prejudice that the respondent is likely to suffer in this application shall be compensated by an award of costs.
7. In the premises therefore, the application is allowed on the following terms:
  1. The time for the applicant to file and serve the memorandum and record of appeal is hereby extended.
  2. The memorandum and record of appeal filed in court on June 27, 2018 is hereby deemed to be properly filed.
  3. The memorandum and record of appeal to be served within fourteen (14) days of today’s date.
  4. The respondent shall have the costs of this application. (If it has not already been served).

**DATED AT NYERI THIS 19<sup>TH</sup> DAY OF OCTOBER, 2022.**



**L. KIMARU**

.....

**JUDGE OF APPEAL**

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

DEPUTY REGISTRAR

