



Principal Secretary, Ministry of Defence & another v Mbaka & another (Civil Appeal (Application) 173 of 2017) [2022] KECA 1128 (KLR) (19 October 2022) (Ruling)

Neutral citation: [2022] KECA 1128 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) 173 OF 2017
LK KIMARU, JA
OCTOBER 19, 2022**

BETWEEN

PRINCIPAL SECRETARY, MINISTRY OF DEFENCE 1ST APPLICANT

ATTORNEY GENERAL 2ND APPLICANT

AND

DOROTHY KANYUA MBAKA 1ST RESPONDENT

MARY SYONYHI MUSYOKA 2ND RESPONDENT

(Being an application for extension of time to the applicants to file a supplementary record of appeal in Civil Appeal No. Nyeri C.A. 173/2017)

RULING

1. The Applicants, The Principal Secretary, Ministry of Defence and the Attorney General have moved this Court under Rule 4 and then Rule 88 (now Rule 90) of the *Court of Appeal Rules* seeking extension of time to enable them file a supplementary Record of Appeal in Nyeri C. A. Civil Appeal No. 176 of 2017. The Applicants further prayed for this Court to order for the consolidation of the two appeals so that the two appeals can be heard together as one. The Applicants explained the reason for the delay in filing the fully complied record of appeal was due to unintended mistakes and omissions which they wish to correct before the Appeal is heard. The Applicants submitted that they discovered the mistakes and omissions during the case management conference thus necessitating the filing of the present application. The application is unopposed.



2. The jurisdiction of this Court to extend time for anything to be done within the time specified in Rule 4 of the Court of Appeal Rules is discretionary. As was held by the Court in Moroo Polymers Limited vs Wilfred Kasyoki Willis [2019]eKLR:

“The principle guiding the exercise of this jurisdiction are now well settled. I will highlight a few by way of illustration. In Edith Gichugu Koine versus Stephen Njagi Thoiti [2014] eKLR Odek, J.A. held the view that the mandate under Rule 4 is discretionary, which discretion is unfettered and does not require establishment of “sufficient reasons”. Neither is it limited to the period for the delays, the degree of prejudice to the respondent if the application is granted and whether the matter raises issues of public importance.

In Nyaigwa Farmers’ Co-operative Society Limited versus Ibrahim Nyambane & 3 Others [2016] eKLR Musinga, J.A. stated that the principle that guide this Court in considering an application of this nature are, the length of the delay, the reason for the delay, the chances of appeal succeeding if the application is granted, and lastly, the degree of prejudice to the respondent if the application is allowed”.

3. In the present application, the appeal has already been filed. It was during case management conference that the Applicants realized that they had inadvertently left out some documents that are necessarily part of the record of appeal. This Court is persuaded by the reasons given by the Applicants for the failure to file the particular documents with the record of appeal are genuine. It was due to an oversight that can be excused in the circumstances. The fact that the Applicants filed the application seeking for extension of time to file supplementary record of appeal so soon after the said case management conference is proof of their keenness to pursue the hearing and determination of the appeal.
4. This Court will therefore exercise its discretion in favour of the Applicants and grant their application for extension of time to file a supplementary record of appeal. The said supplementary record of appeal should be filed and served within fourteen (14) days of today’s date. As for the Applicants’ application seeking the consolidation of the two appeals, the same cannot be allowed since this Court lacks jurisdiction to grant the same. The applicants shall be at liberty to approach the full bench of this Court for such appropriate orders.

There shall be no orders as to costs.

DATED AT NYERI THIS 19TH DAY OF OCTOBER, 2022.

L. KIMARU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

