



**Union of Kenya Civil Servants v Nyamato & 2 others (Civil Application  
E017 of 2022) [2022] KECA 1060 (KLR) (7 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1060 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E017 OF 2022  
F SICHALE, JA  
OCTOBER 7, 2022**

**BETWEEN**

**UNION OF KENYA CIVIL SERVANTS ..... APPLICANT**

**AND**

**JOHN SILAS NYAMATO ..... 1<sup>ST</sup> RESPONDENT**

**DONALD KAMURU KIBERA ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPH BONI MUNYOKI ..... 3<sup>RD</sup> RESPONDENT**

*(An Application for extension of time to file and serve Notice and Record of Appeal against the Ruling and Orders of Mboya, J dated 11th November 2021 IN ELC Case No. 1222 of 2007)*

**RULING**

1. Union of Kenya Civil Servants (the applicant herein), has vide a motion dated 5<sup>th</sup> January 2022, brought pursuant to the provisions of Sections 3, 3A, 3B and 5 of the *Appellate Jurisdiction Act* (CAP 9) and Rules 4, 42 and 43 of the Court of Appeal Rules 2010, sought leave to file Notice and Record of Appeal out of time against a ruling issued by Mboya, J on 11<sup>th</sup> November 2021.
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Tom Odege, the Secretary General of the applicant, who deposed inter alia that the ruling having been delivered on 11<sup>th</sup> November 2021, the applicant had until 25<sup>th</sup> November 2021 to file Notice of Appeal but did not do so. That the period between 25<sup>th</sup> November 2021, (the deadline for filing the notice of appeal) and 18<sup>th</sup> January 2022, (the time for filing the application) was approximately 30 days which was not inordinate.
3. He further deposed inter alia that the delay herein was occasioned by internal wrangles on account of a fall out within the applicant, after the applicant's elections were held, as a former official of the applicant failed to communicate to the applicant the contents of the ruling and the applicant could



not instruct the advocate to appeal against the decision and that further the applicant had to have an internal meeting to deliberate on the way forward before giving the advocate instructions and that when the instructions were finally given, the time within which to lodge a Notice of Appeal had already lapsed.

4. There was no response on part of the respondents.
5. The applicant in its submissions basically reiterated the contents of the supporting affidavit and submitted that the application had been brought timeously and that the delay herein was not inordinate and that further the same had been explained and that the intended appeal was not in any way frivolous.
6. The 2<sup>nd</sup> respondent also filled submissions on his behalf and the proposed 4<sup>th</sup> to 6<sup>th</sup> defendants which are not in any way relevant to the application that is currently before this Court.
7. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the rival submission by the parties, the cited authorities and the law.
8. The principles upon which this Court exercises its discretion under Rule 4 are firmly settled. The Court has wide and unfettered discretion in deciding whether to extend time or decline the same. However, in exercising its discretion the Court should do so judiciously. See *Fakir Mohamed vs. Joseph Mugambi & 2 Others* C.A. No. NAI. 332 of 2004 where the Court laid out some of the considerations to be taken into account by the Court in deciding applications of these nature as follows; the length of the delay, the causes of the delay, the possibility of the appeal succeeding and prejudice to be occasioned to the parties. In the instant case, the impugned ruling was delivered on 11<sup>th</sup> November 2021, whereas the instant motion is dated 5<sup>th</sup> January 2022. There has therefore been a delay of about 55 days which in my opinion and from the circumstances of this case is not inordinate.
9. Regarding reasons for the delay, it was contended that the delay herein was occasioned by internal wrangles on account of a fall out after the applicant's elections were held, as a former official of the applicant failed to communicate to the applicant the contents of the ruling and that the applicant could not instruct the advocate to appeal against the decision and that further the applicant had to have an internal meeting to deliberate on the way forward before giving the advocate instructions and that when the instructions were finally given, the time within which to lodge a Notice of Appeal had already lapsed.
10. It was further contended that between the period of 21<sup>st</sup> December 2021 and 13<sup>th</sup> January 2022, the Court was on vacation and thus the application could not have been filed.
11. From the circumstances of this this case and due to the aforesaid reasons I am satisfied that the delay herein has been explained to the satisfaction of this Court and I find the reasons given for the delay to be tenable.
12. With regard to the possibility of the appeal succeeding, I have looked at the annexed draft Memorandum of Appeal and I am satisfied that the applicant has an arguable appeal worthy of consideration by the Court. Of course I am alive to the fact that I cannot say more regarding this issue lest I embarrass the bench that will be eventually seized of the appeal.
13. As regards prejudice, it has been demonstrated to the satisfaction of this Court, that the applicant will stand to suffer prejudice if the instant motion is not allowed.



14. Given the circumstances, I find that the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time to file an appeal out of time.
15. Accordingly, the applicant's motion dated 5<sup>th</sup> January 2022 is meritorious and the same is hereby allowed in terms of prayers 2 and 3.
16. The applicant will file and serve the Notice and Record of Appeal within 60 days from the date of this ruling failure to which these orders shall stand vacated.
17. The costs of this motion shall abide the outcome of the intended appeal. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER, 2022.**

**F. SICHALE**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

