



**Stephen & another v Nairobi City Water and Sewerage Company; Kenya County Government Workers Union (Interested Party) (Civil Application E189 of 2021) [2021] KECA 30 (KLR) (23 September 2021) (Ruling)**

Neutral citation: [2021] KECA 30 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E189 OF 2021  
DK MUSINGA, JA  
SEPTEMBER 23, 2021**

**BETWEEN**

**PETER MURURU STEPHEN ..... 1<sup>ST</sup> APPLICANT**

**NELSON WANYOIKE MBURU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**NAIROBI CITY WATER AND SEWERAGE COMPANY ..... RESPONDENT**

**AND**

**KENYA COUNTY GOVERNMENT WORKERS UNION . INTERESTED PARTY**

*(Being an application for extension of time to file the Record of Appeal out of time in an intended appeal against the Judgment of the Employment and Labour Relations Court (Radido, J.) delivered on 1st March 2019 in E.L.R.C Cause No. 1334 of 2013)*

**RULING**

1. The applicants' notice of motion dated 27th May 2021 brought under rules 4 and 41 of this Court's Rules seeks leave to file the record of appeal and memorandum of appeal out of time in respect of the judgment of the Employment and Labour Relations Court (ELRC) (Radido, J.) in ELRC Cause No. 1334 of 2013 that was delivered on 1st March 2019. The applicants also seek to have the notice of appeal filed on 1st March 2019 as deemed properly filed.
2. The application is supported by the 1st applicant's affidavit where he deposes, *inter alia*, that subsequent to the delivery of the impugned judgment on 1st March 2019, having been aggrieved by the same, his advocates who were then on record, M/s Kinyua Njagi & Company filed a notice of appeal on 1st March 2019. On 4th March 2019 his advocates also applied for certified copies of the proceedings



and the judgment. On 24th September 2019, a notification was given by the Deputy Registrar of the Court that the proceedings were ready for collection and subsequently a certificate of delay was issued.

3. The applicants instructed their advocates to file an appeal against the judgment and paid to the advocates Kshs.30,000 as deposit of legal fees. Thereafter, the applicants kept on checking with their advocates about the fate of the appeal and they were given the impression that the appeal had been filed. It however transpired that the said law firm did not file the appeal, and in fact closed its offices. As a result, the applicants instructed M/s Mitey & Associates to file this application and pursue the intended appeal on their behalf.
4. The application is not opposed by the respondents. That notwithstanding, the Court must consider whether the applicants have satisfied the principles under which applications for extension of time are considered.
5. Under rule 4 of this Court's Rules, the principles that guide this Court in consideration of an application of this nature include the length of the delay, the reasons for the delay, possibly the chances of success of the intended appeal, and the degree of prejudice that may be suffered by the respondent if the application for extension of time is granted. See *Fakir Mohammed v Joseph Mugambi & 2 Others* [2005] eKLR.
6. The impugned judgment was delivered on 1st March 2019 but this application was not filed until 27th May 2021. The delay is therefore inordinate considering that the proceedings were ready for collection on 24th September 2019. However, the delay has been well explained by the applicants. The applicants, having paid a deposit of legal fees to their erstwhile advocates M/s Kinyua Njagi & Company, were made to believe that the appeal had been filed, which was not the case. The delay was entirely occasioned by the said advocates and the applicants are not to blame for that.
7. Looking at the draft memorandum of appeal that has been annexed to the applicants' affidavit, it is evident that the intended appeal is arguable.
8. The respondents will not be prejudiced if the applicants' application is granted.
9. In view of the foregoing, I find this application meritorious and hereby grant leave to the applicants to file the record and memorandum of appeal out of time. The same should be filed and served within 14 days from the date hereof.
10. The notice of appeal was filed within time and it is hereby deemed as duly filed. All in all, I allow the application. The costs of the application shall be in the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2021.**

**D. K. MUSINGA, (P)**

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**JUDGE OF APPEAL**

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

Signed

DEPUTY REGISTRAR

