



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nadite v National Police Service Commission (Civil Application  
E090 of 2021) [2021] KECA 77 (KLR) (8 October 2021) (Ruling)**

Neutral citation: [2021] KECA 77 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E090 OF 2021  
DK MUSINGA, JA  
OCTOBER 8, 2021**

**BETWEEN**

**CELINA NADITE ..... APPLICANT**

**AND**

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

*(Being an application for extension of time to file and serve a Notice and Record of Appeal out of time arising from the Judgment of the Employment and Labour Relations Court (Nduma Nderi, J.) delivered on 7th March 2019 in E.L.R.C Petition No. 11 of 2018)*

**RULING**

1. The applicant's undated notice of motion seeks leave to file and serve an appeal and the record of appeal out of time. The application is supported by the applicant's affidavit in which she deposes, inter alia, that she was enlisted into the National Police Service as a Police Constable in 2008; that following the recent Police vetting exercise under the National Police Vetting Regulations of 2013, she was removed from her employment on account of lacking in financial propriety; that being aggrieved by that decision, she challenged it and was subjected to review interview which upheld the earlier decision to remove her from the police force; that she filed Petition No. 11 of 2018 in the Employment and Labour Relations Court at Nakuru seeking, inter alia, an order to quash the vetting proceedings and reinstatement as a police constable; that the Petition was dismissed on 7th March 2019 and being aggrieved by the said decision she instructed her former advocates, Ms Mongeri & Company, to lodge a notice of appeal, which he did and requested for typed proceedings.
2. The applicant further states that the proceedings were supplied to her advocate in September 2020 but her advocate failed to lodge the appeal; that the applicant intends to pursue an appeal and contends, inter alia, that during the vetting interview and review she was not given a fair hearing contrary to the dictates of Article 50(1) of the *Constitution*; and that she was not accorded fair administrative action



contrary to Article 47 of the Constitution as read together with section 4 of the *Fair Administrative Action Act*, among others.

3. The applicant believes that her intended appeal has high chances of success as shown in a draft memorandum of appeal annexed to her affidavit.
4. The respondent opposes the application arguing, inter alia, that the applicant's erstwhile advocate filed a notice of appeal on 18th March 2019 and the typed and certified proceedings were issued on 1st September 2020 and no reasonable explanation has been proffered for the delay of more than 2 years in filing the intended appeal.
5. The respondent further stated that there is evidence that the typed proceedings were ready for collection as early as March 2019 because other petitioners who had filed similar petitions before the Employment and Labour Relations Court on the basis of the decision of the Police Vetting Board obtained certified proceedings on 21st March 2019.
6. I have considered the application, the replying affidavit and the submissions filed by both parties. The principles upon which this Court determines an application for extension of time under rule 4 are well settled. The Court considers, inter alia, the length of the delay; the reason for the delay; possibly the chances of success of the intended appeal and the degree of prejudice that would be occasioned to the respondent if the application for extension of time is granted. See *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*.
7. The judgment sought to be appealed against was delivered on 7th March 2019. The applicant filed this application for extension of time in May 2021. There is therefore an inordinate delay of more than 2 years. That delay has not been well explained. There is evidence that the typed proceedings were ready as way back as 21st March 2019. But even assuming the applicant's advocate obtained them in September 2019, there is no satisfactory explanation as to why the intended appeal was not filed.
8. The applicant has not demonstrated that between September 2019 and May 2021, she made diligent effort to pursue the intended appeal. The applicant did not demonstrate that she made any enquiries from her former advocate as to whether they had filed the intended appeal after they obtained the typed proceedings.
9. In the absence of a satisfactory explanation for such inordinate delay there would be no basis of granting the orders sought. The exercise of the Court's discretion to extend time has to be done judiciously. See *Aviation Cargo Support Limited v St. Mark Freight Services Limited*.

Where there has been unexplained inordinate delay, the Court is not bound to consider the other principles.

10. I find this application lacking in merit and dismiss it with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF OCTOBER, 2021.**

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

.....

**JUDGE OF APPEAL**

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

**Signed**



**DEPUTY REGISTRAR**

