



**Yoya v National Police Service Commission (Civil Application  
54 of 2020) [2021] KECA 248 (KLR) (3 December 2021) (Ruling)**

Neutral citation: [2021] KECA 248 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION 54 OF 2020  
PO KIAGE, JA  
DECEMBER 3, 2021**

**BETWEEN**

**FRANCIS AGESA YOYA ..... APPLICANT**

**AND**

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

*(An application for extension of time to file and Serve the Record of Appeal from the Judgment and Decree of the Employment and Labour Relations Court at Kisumu (N. Nderi, J.) dated 7th March, 2019) in ELRC Petition No. 15 of 2018)*

**RULING**

1. The applicant, Francis Agesa Yoya has moved the Court by a Motion dated 26th May, 2020, seeking the following orders;
  - a) That the applicant herein be granted leave to file a Record of Appeal out of time against the Judgment of the Hon Justice Mathews N Nderi delivered on the 7th of March, 2020.
  - b) That the Hon Court be pleased to issue any order it deems fit and just to grant in the circumstances.
2. In the exercise of my free and unfettered discretion, I shall be guided by factors to be considered in a Rule 4 application as devised by this Court over the years. As explained in the oft cited *LEO SILA MUTISO -VS- ROSE HELLEN WANGARI MWANGI (1999) 2 EA 231*, they are first, the length of the delay; secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.
3. The applicant deposed that the judgment was delivered on 7th March, 2019, the notice of appeal and the letter bespeaking the proceedings were lodged on 18th March, 2019. The notice was served on the



respondent on 28th March, 2019. The typed proceedings were received on 15th April, 2019 and the appeal was ready to be lodged. However, the applicant was financially drained and therefore unable to pay the requisite Court fees and the advocates' fees. By the time the applicant was able to raise the requisite funds from his friends and relatives, time to lodge the appeal had already lapsed hence the need for the current application. He urged that the delay was not intentional but rather was occasioned by reasons beyond his control.

4. The respondent opposed the application terming the delay as inordinate and unsatisfactorily explained. It urged the Court to dismiss it with costs.
5. Although there is no maximum or minimum period of delay set by the law, anyone seeking this relief must satisfactorily explain the cause of the delay. A plausible and satisfactory explanation is the key that unlocks the Court's flow of discretionary favour. See *ANDREW KIPLAGAT CHEMARINGO -VS- PAUL KIPKORIR KIBET [2018] eKLR*. Having carefully considered the application, I have come to the conclusion that the delay, of over a year, was not only inordinate but also inexcusable. The explanation given by the applicant regarding lack of finances lacks merit as the same would have been cured by seeking an appropriate relief under Rule 115 of the Rules of this Court. Extension of time being a creature of Equity, one has to show that he was not at fault leading to the time lapse. See the Supreme Court's dicta in *NICHOLAS KIPTOO ARAP KORIR SALAT -VS-INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & 7 OTHERS [2014] eKLR*.
6. In the result, I decline to grant the prayer to extend time to file the appeal, and accordingly dismiss the application with costs.

**DATED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF DECEMBER, 2021.**

**P. O. KIAGE**

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**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR**

