



**Mayienda v Nyangena Hospital Ltd (Miscellaneous Civil Application E054 of 2024) [2024] KEELRC 1612 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1612 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
MISCELLANEOUS CIVIL APPLICATION E054 OF 2024**

**S RADIDO, J  
JUNE 26, 2024**

**BETWEEN**

**ROSE GESARE MAYIENDA ..... APPLICANT**

**AND**

**NYANGENA HOSPITAL LTD ..... RESPONDENT**

**RULING**

1. Rose Gesare Mayienda (the applicant) filed a Motion with the Court on 14 May 2024, against Nyangena Hospital Ltd (the Respondent) seeking orders:
  - i. ...
  - ii. That the firm of Ombui Ratemo & Associates Advocates be granted leave to come on record as advocates for the applicant herein in place of Messrs Samuel N. Mainga & Co. Advocates.
  - iii. That the Honourable Court be pleased to grant the applicant leave to file appeal out of time against the decree and judgment in Kisii MC ELRC No. E011 of 2022, *Rose Gesare Mayienda v Nyangena Hospital Ltd*.
  - iv. That costs of this application be in the cause.
2. The grounds in support of the application were that the delay in filing the Appeal was inadvertent and excusable because the applicant had not been able to secure a copy of the judgment and proceedings to prepare a Memorandum of Appeal; the previous advocate on record was not keen to pursue an Appeal; the intended Appeal was meritorious and that it was in the interest of justice to grant the orders sought.
3. The Respondent filed on 27 May 2024 a replying affidavit sworn by its General Manager asserting that the application did not meet the threshold for grant of leave to Appeal out of time; the request for copy of judgment and proceedings was lodged with the registry on 30 November 2023, just a few days before lapse of the 30-days window to Appeal, the judgment having been delivered on 6 November 2023;



there was indolence and inordinate delay as it had taken the applicant about 5 months after the request for proceedings to file the instant application; the application offended the mandatory provisions of Rule 8(1) and (2) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 and section 79G of the *Civil Procedure Act*.

4. The applicant filed her submissions on 31 May 2024 and the Respondent on 11 June 2024.
5. The Court has considered the Motion, affidavits and submissions.

#### **New advocate on record**

6. The Respondent has not objected to the plea by the firm of Ombui Ratemo & Associates Advocates to come on record for the applicant, and the Court will as a matter of procedure allow the said firm to come on record.

#### **Grant of leave to Appeal out of time**

7. One of the primary grounds advanced by the applicant in support of the prayer for leave to appeal out of time is that copies of proceedings and judgment had not been released by the time of making the application.
8. It has now become a performance standard in this jurisdiction that a Court should release or publicise a judgment or decision to the parties and Kenya Law Reports within 5 days of delivery.
9. This Court does not understand why it has taken this long for the trial Court to release the judgment. The Court says this while alive to the fact that apart from the judgment, expeditious typing of proceedings has been a challenge in various court stations because of human resource constraints.
10. The applicant has a right of appeal against the judgment of the Principal Magistrate.
11. The applicant has annexed a draft Memorandum of Appeal to the Motion. The delay to file the Memorandum of Appeal was occasioned by factors beyond her control (see *Njoroge v Kimani* (2022) KECA 1188 (KLR)).
12. In the Court's view, the interests of justice tilt towards exercising the Court's discretion in favour of the applicant.

#### **Orders**

13. In light of the above, the Court orders:
  - i. The firm of Ombui Ratemo & Associates Advocates is allowed to come on record for the applicant.
  - ii. The applicant is granted leave to file and serve a Memorandum of Appeal within 30-days from today.
14. Costs of the application to abide the Appeal.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 26<sup>TH</sup> DAY OF JUNE 2024.**

**RADIDO STEPHEN, MCIArb**

**JUDGE**

Appearances



For applicant Ombui Ratemo & Associates Advocates

For Respondent Cecilia Milimu Advocates

Court Assistant Chemwolo

