



Nthokoi v Fuel Net Company Limited (Employment and Labour Relations Cause E122 of 2022) [2023] KEELRC 1554 (KLR) (16 June 2023) (Ruling)

Neutral citation: [2023] KEELRC 1554 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E122 OF 2022**

**AN MWAURE, J
JUNE 16, 2023**

BETWEEN

FRANCIS NGATI NTHOKOI APPELLANT

AND

FUEL NET COMPANY LIMITED RESPONDENT

RULING

1. The applicant has filed an application under Notice of Motion dated August 16, 2022 and makes the following prayers:-
 1. That the Application be deemed urgent, heard ex-parte and service of the Application be dispensed with in the first instance.
 2. That the Honourable Court be pleased to allow the intended Appeal to be filed out of time.
 3. That the Honourable Court be at liberty to make such orders as it may deem fit and just to award.
 4. That the costs of the Application be provided for.
2. The application is grounded on the affidavit deposed by Ronald Onyango. The said deponent avers that the applicant is desirous of prosecuting the intended appeal so that he may prosecute the suit on merit.
3. He says that the court rendered itself on the Respondent's application dated July 26, 2021 on May 20, 2022. He says he only got copies of the proceedings on July 2, 2022 and so wishes to file the Memorandum of Appeal and record of appeal and the draft memorandum of appeal is annexed thereto.



4. The court has considered the applicant's submissions dated January 31, 2023 and as well the Respondent's submissions dated January 10, 2023.

Analysis and determination

5. The decision to exercise discretion by the courts to enlarge time to appeal a case out of time is clearly vested in the court. Extension of time to appeal is not a right of a party but is an equitable remedy awarded to only a deserving party.
6. In the various authorities among them *Nairobi Civil Application No 162 Of 2022 Thuita Mwangi v Kenya Airways Limited [2003] eKLR* and *Kiptoo Korir Arap Salat v Independent Electoral And Boundaries Commission & 7 Others [2014] eKLR*, the courts have laid down the guiding principles of granting extension of time and they include –
 - (i) The period of delay;
 - (ii) The reason for the delay;
 - (iii) The arguability of the appeal;
 - (iv) The degree of prejudice which could be suffered by the if Respondent the extension is granted;
 - (v) The importance of compliance with time limits to the particular litigation or issue; and
 - (vi) The effect if any on the administration of justice or public interest if any is involved.
7. The court has considered these principles and can comfortably state that even if the applicant is late to file the appeal, the duration of delay was not unreasonably long. Furthermore, the reason given for delay was that once he learnt that the ruling had been delivered on May 20, 2022 he wrote to the Registrar and was only able to get the typed proceedings and Ruling on July 2, 2022.
8. The records show the applicant filed this application on August 16, 2022. The further delay of one and a half month is not explained but is not excessively long and the court is ready to downplay that delay for the sake of justice which must be availed to all parties.
9. Looking on the draft memorandum of appeal by the applicant, the court finds the said appellant has arguable grounds and so in accordance to the provisions of Articles 48 and 50 of the *Constitution* of Kenya, each person is entitled to be given an opportunity to be heard on the merits of his case. The court in the case of Malindi Civil Appeal No 20 of 2020 proffered that for an intended appeal to be termed as arguable all that is needed in law is that there be even one arguable point and that will suffice.
10. The court does not agree with the Respondent that the applicant did not give an explanation for the delay. He actually did.
11. The court is inclined to allow the applicant file his appeal to the Ruling dated May 20, 2022 and the Memorandum of Appeal whose draft is annexed to this application be filed together with the record of appeal within 7 days from today's date.
12. The costs of this application will be in the intended appeal.
Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 16TH DAY OF JUNE, 2023

ANNA N. MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

ANNA N. MWAURE

JUDGE

