



REPUBLIC OF KENYA



Nadite & 19 others v National Police Service Commission (Petition 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 & 36 of 2018 (Consolidated)) [2023] KEELRC 2366 (KLR) (4 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2366 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

**PETITION 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23,
24, 25, 26, 27, 28, 29 & 36 OF 2018 (CONSOLIDATED)**

S RADIDO, J

OCTOBER 4, 2023

BETWEEN

CELINA NADITE 1ST PETITIONER
JOSEPHINE NYAKARA REGICHA 2ND PETITIONER
VERONICA LEIRO SIMINTOI 3RD PETITIONER
BEATRICE WAMBURA MURIUKI 4TH PETITIONER
FRANCIS AGESA YOYA 5TH PETITIONER
SIMON NAIBEI 6TH PETITIONER
PHILOMENA MWONGELI NICHOLAS 7TH PETITIONER
DOROTHY ADHIAMBO OKACH 8TH PETITIONER
PETER MUNGAI KAMAU 9TH PETITIONER
GEOFFREY MANYALI KIKECH 10TH PETITIONER
JOYCE ARUS OWITI 11TH PETITIONER
KENNEDY RUCHO OBUSURU 12TH PETITIONER
JAPHETH SAFARI BAYA 13TH PETITIONER
SAMSON KIPKULEI AYEBEI 14TH PETITIONER
NELSON DAVID NJOROGE 15TH PETITIONER
ROSINA MKAKISHA MAGANGA 16TH PETITIONER
SORA DUBA HUKA 17TH PETITIONER
ROSELINE LUVEGA MWANJE 18TH PETITIONER



ROTICH SYLVESTER KIPRONO 19TH PETITIONER
CHARLES KIRUI KIPRONO 20TH PETITIONER
AND
NATIONAL POLICE SERVICE COMMISSION RESPONDENT

RULING

1. For consideration is a Motion dated 5 June 2023 by the 16th petitioner, Rosina Mkakisha Maganga seeking orders:
 - (1) ...
 - (2) That leave be granted to the firm of Kithi & Co Advocates to come on record for the applicant.
 - (3) That the Honourable Court be pleased to extend and/or enlarge time for filing the Memorandum of Appeal and Record of Appeal out of time against the judgment of the Honourable Court delivered on March 7, 2019 in ELRC Petition No. 26 of 2018.
 - (4) That the annexed Memorandum of Appeal be deemed to be duly filed and properly on record.
 - (5) That the Honourable Court be deemed to grant any further directions that may be necessary for the expeditious determination of the appeal.
 - (6) That costs of this application be in the cause.
2. The grounds in support of the application were that a notice of appeal was filed on 19 March 2019, but the erstwhile advocate failed to file a record of appeal within the prescribed time despite instructions to file; that the then advocate did not update the applicant on the status of the appeal and that she only learnt that the Record of Appeal had not been filed upon visiting the registry.
3. When the application was placed before the court on 7 June 2023, it directed that the application be served and replies and submissions be filed and exchanged ahead of further directions on 26 June 2023.
4. The applicant filed her submissions on 15 June 2023.
5. On 26 June 2023, the Respondent requested for more time to file and serve responses and submissions, and the Court gave it up to 30 July 2023.
6. The Respondent filed a replying affidavit on 28 July 2023 but its submissions were not available on the e-filing platform.
7. The Court has considered the application, affidavits and submissions.
8. Without grant of leave to the firm of Kithi & Co. Advocates to come on record, the application under consideration would be a non-starter.
9. In order to do justice on the merits, the Court grants leave to the firm of Kithi & Co. Advocates to come on record for the applicant.
10. On the merits of the application, the court notes that a notice of appeal was lodged with the Court on 19 March 2019, and that under rule 4 of the *Court of Appeal Rules*, 2010, the power to extend time was (is) reposed in the Court of Appeal.



11. The applicant did not direct the mind of this court to any express statutory provision clothing it with the jurisdiction to enlarge time for purposes of filing a record of appeal in the Court of Appeal.
12. In any case, even if this Court had jurisdiction it would not have exercised it in favour of the applicant because she did not disclose the date when she found out that her advocate had not filed the Record of Appeal. Such disclosure was necessary and material.
13. The motion dated 5 June 2023 is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 4TH DAY OF OCTOBER 2023.

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For applicant Kithi & Co. Advocates

For Respondent National Police Service Commission

Court Assistant Chrispo Aura

