



**Endmor Steel Millers Ltd v Urasa (Appeal E323 of 2024)  
[2025] KEELRC 2637 (KLR) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2637 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E323 OF 2024  
NJ ABUODHA, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**ENDMOR STEEL MILLERS LTD ..... APPELLANT**

**AND**

**ERIC AMOS URASA ..... RESPONDENT**

**RULING**

1. Before me is an application dated 29<sup>th</sup> October, 2024 seeking among others leave to file an appeal out of time against the judgment of Hon. D. Kuto (SPM) delivered on 9<sup>th</sup> October, 2024 in Mavoko CMCC No. 1239 of 2017. The application was supported by the affidavit of Dennis Kathia who deposed among others that:
  - a. That I work with The Heritage Insurance Company Limited (hereinafter referred to as “the company”) as its Claims Analyst/Legal.
  - b. That the company had insured the Applicant at the material time and as such instructed the firm of Mbai Waweru Advocates (hereinafter referred to as the said Advocates”) to defend the Applicant in Mavoko CMCC No. 1239 of 2017, *Eric Amos Urassa -vs- Endmor Steel Millers Ltd.*
  - c. That the said suit came up for hearing on 12<sup>th</sup> September 2018 and 11<sup>th</sup> July, 2024.
  - d. That judgment was delivered by the learned trial Magistrate on 9<sup>th</sup> October, 2024 in the following terms:-
    - i. Liability 100% against the defendant
    - ii. General Damages Kshs.1,500,000/=
    - iii. Special Damages Kshs. 23,750/=



- iv. Costs and interest of the suit
  - e. That the Company being dissatisfied with the said award, we were to write to our Advocates instructing them to file an Appeal noting that the period within which to file the Appeal was to lapse on 22<sup>nd</sup> October 2024.
  - f. That we advertently failed to instruct our Advocates on time and noted the same when our Advocates sought confirmation on our position to Appeal vide their email dated 28<sup>th</sup> October, 2024. We instructed them on the same.
  - g. That the Applicant is desirous of challenging the learned trial Magistrate's entire Judgment on Liability and Quantum on grounds that their evidence was not taken into account.
  - h. That this Application has been filed without unreasonable delay.
2. The application was disposed of by written submissions. Ms. Luchemo for the applicant/intended appellant submitted among others that the supporting affidavit by Dennis Kathia and James Mbogo Karuiki and annexures thereto have demonstrated that the time within which to file an appeal had lapsed but the applicant had provided good and sufficient cause for not filing the appeal on time. Counsel relied on section 95 and 3A of the [Civil Procedure Act](#) and Order 50 Rule 6 of the [Civil Procedure Rules](#) and submitted that the Court is clothed with power to extend time to file an appeal and such order may be made in the interest of justice. Counsel further relied on the case of [Paul Musili Wambua vs. Attorney General & 2 others](#). According to Counsel, duration for the delay was less than 10 days and the reason for the delay had been satisfactorily demonstrated and further that the intended appeal had a high chance of success.
3. Mr. Muriuki for the respondent on the other hand submitted that the application was a nonstarter as the affidavit in support of the application was sworn by a person not a party to the proceedings both in the lower court and the intended appeal. The deponent stated that he was an employee of Heritage Insurance who allegedly insured the intended appellant. Further the deponent did not depone how he derived authority to swear the affidavit in support of the application. The said affidavit therefore rendered the application incompetent. Counsel wondered why the intended appellant herein who took part in the trial in the lower court and availed witnesses did not authorise any of its officers to swear the affidavit in support of the application. In this regard Counsel relied on the cases of [P.M.M Private Safaris vs. Kevin Ijatia](#) [2006] eKLR, [Mwalimu David vs. TSC](#) [2022] eKLR and [Moiwo Matanya Ole Keiwa vs. Chief Justice of Kenya & 6 Others](#) [2008] eKLR where these courts struck off applications which without proper explanation and justification were supported by deponents who were not parties to the suit.
4. On the merit of the application, counsel submitted that the application lacked merit going by the contents of the supporting affidavit. The deponent contends that time within to file the appeal had lapsed on 22<sup>nd</sup> October, 2024 yet the judgment had been delivered on 9<sup>th</sup> October, 2024. According to Mr. Muriuki rule 12 of [ELRC Rules](#) stipulated that an appeal shall be lodged within 30 days of the delivery of the judgment. This therefore meant the time for appeal had not lapsed hence the application for extension of time was not necessary. Counsel further submitted that if as deponed counsel was instructed to appeal on 28<sup>th</sup> October, 2024 then it was their fault not appealing as they were still within time stipulated by the rules. In this regard counsel relied on the case of [Rupa Savings & Credit Cooperative Society vs. Violet Shidogo](#) [2022].
5. The Court has reviewed and considered the application herein, the supporting affidavit and submissions by Counsel and authorities relied on and does not find the application meriting the



exercise of its discretion to extend time to file an appeal. The Court agrees with Counsel for the respondent that no good cause has been demonstrated why the intended appellant who participated in the trial court and even availed witnesses could not swear the affidavit in support of the application. Mr. Dennis Kathia who deponed that he was an employee of Heritage Insurance Company who insured the intended appellant did not set proper background and reasons why he was the one who swore the supporting affidavit instead of the intended appellant. The Court further notes that in applications for extension of time to file an appeal, the intended appellant usually attaches the draft memorandum of appeal demonstrating the grounds upon which they intend to appeal and submit on their chances of success. In this application, the applicant has merely alleged that the intended appeal if leave to appeal is granted, had a high chance of success without demonstrating either in the supporting affidavit or by submissions in what way it had high chances of success.

6. In conclusion the application is therefore found unmerited and is hereby dismissed with costs.

7. It is so ordered.

**DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE - APPEALS DIVISION**

