

**REPUBLIC OF
KENYA IN THE COURT
OF APPEAL
AT NAIROBI
[CORAM: NYAMWEYA
J.A]**

**CIVIL APPLICATION NO. E705
OF 2024 BETWEEN
EDWARD GITHINJI AND 131 OTHERS.....APPLICANTS
VERSUS
KENYA MEDICAL RESEARCH INSTITUTE.....1ST
RESPONDENT
THE DIRECTOR, KENYA MEDICAL
RESEARCH INSTITUTE.....2ND
RESPONDENT
THE BOARD OF MANAGEMENT, KENYA MEDICAL
RESEARCH INSTITUTE.....3RD
RESPONDENT
SALARIES AND REMUNERATION
COMMISSION.....4TH
RESPONDENT
MINISTRY OF HEALTH.....5TH
RESPONDENT
THE CABINET SECRETARY, NATIONAL
TREASURY AND PLANNING.....6TH
RESPONDENT
THE HONOURABLE ATTORNEY GENERAL....7TH
RESPONDENT**

***(An application for extension of time to file a Record of Appeal
against the Judgment delivered by the Employment and
Labour Relations Court at Nairobi (O.Kebira J.) on 26th October
2023 in Cause No. 1545 of 2018)***

RULING OF THE COURT

1. The applicants herein are seeking extension of time to file their Record of Appeal against the judgment delivered on 26th October 2023 by the Employment and Labour Relations Court at Nairobi **(O.Kebira J.)** in **Cause No. 1545 of 2018**. The said prayer for extension of time is in an application

dated 28th November 2024 which is expressed as being brought pursuant to Rule 4 of the Court of Appeal Rules amongst other Rules, and is supported by an affidavit sworn on even date by one of the applicants, namely Eric Bello.

2. The applicants averred that after the delivery of the subject judgment by the Employment and Labour Relations Court (“ELRC”), the applicants’ advocates lodged a Notice of Appeal on 9th November, 2023 within the time provided for in the law and served it immediately alongside the requests for typed proceedings within the time provided for in the law. In addition, that the typed proceedings were later availed on or about the 25th November 2024 as well as a certificate of delay of the same date. However, after they inadvertently failed to file the record of appeal in time, they filed the instant application without unreasonable delay and the order sought will not prejudice the respondents. Lastly, that the intended appeal is meritorious and raises arguable grounds with a chance of success. I note that whilst the applicants annexed copies of their draft memorandum of appeal, notice of appeal, request for proceedings and judgment, the certificate of delay and the proceedings, a copy of the judgment that is sought to be appealed was not annexed.

3. The applicant’s advocates additionally filed written submissions dated 24th July 2025 in which the above

averments were reiterated, and in which

reliance was placed on various decisions of this Court on the criteria that guides the exercise of the discretion under Rule 4 of the Court of Appeal Rules.

4. The 1st respondent opposed the application by way of submissions dated 6th August 2025 (*sic*) on the grounds that the application is grossly delayed, lacks merit and fails to meet the legal threshold for extension of time. While citing various judicial authorities, the 1st respondent urged that it has taken the applicants over one (1) year between the date of judgment delivered in the trial court and the time when they filed the instant application on the ground that the certified proceedings and judgment were only made available on 25th November 2024, despite no evidence of diligent follow ups with the registry. Therefore, that the delay was inordinate and inexcusable, and the applicants have failed to demonstrate good and sufficient cause for the delay. Lastly the respondent will suffer serious prejudice if this application is allowed as there has been no valid appeal on record for over a year and allowing the appeal at this late stage defeats the principle of finality in litigation.
5. The other respondents did not respond to the application. I heard the application in chambers in the absence of the parties on 29th July 2025, and have considered the arguments put forth by

the applicant and the 1st respondent. The principles that apply to an application for extension of

time under Rule 4 of the Court of Appeal Rules of 2022 have been the subject of many decisions of this Court and the Supreme Court of Kenya. In summary, the Court of Appeal confirmed in the case of **Leo Sila Mutiso vs Rose Hellen Wangare Mwangi (1999) 2 EA 231** that the decision whether or not to extend time for appealing is essentially discretionary, taking into account the length of delay and reason for the delay.

6. In the case of **Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 Others, Supreme Court of Kenya Application No. 16 of 2014**, the Supreme Court of Kenya set down the underlying principles that a Court should consider in exercising its discretion as being:

- " i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;***
- ii. A party who seeks an extension of time has the burden of laying a basis to the satisfaction of the court;***
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;***
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;***
- v. Whether the respondents will suffer any prejudice if the extension is granted;***
- vi. Whether the application has been brought without undue delay; and***
- vii. Whether in certain cases, like election***

petitions, public interest should be a consideration for extending time."

7. The Supreme Court of Kenya also pronounced as follows in the case of **Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet [2018] eKLR:**

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

8. The 1st respondent does not dispute that there was a judgment delivered by the ELRC on 26th October 2023, and that the applicants filed their Notice of Appeal on 9th November 2023. While the 1st respondent did not dispute the averment made by the applicants that the said Notice of Appeal was filed in time, I note that the copy annexed by the applicants indicate that the said Notice was lodged on 27th November 2023. The applicants also annexed a copy of a letter dated 13th November 2023 requesting for the typed proceedings in the ELRC and a Certificate of Delay dated 26th November 2024 by the Deputy Registrar of the said Court, indicating that the time taken time taken to prepare and supply the typed copy of proceedings was from 13th November, 2023 to 25th November, 2024.
9. It is notable in this respect that Rule 84 of the Court of Appeal Rules of 2022 provides as follows:

84. (1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—

- (a) a memorandum of appeal, in four copies;**
- (b) the record of appeal, in four copies;**
- (c) the prescribed fee; and**
- (d) security for the costs of the appeal:**

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent..

10. The only requirement for reliance on the proviso to sub-rule (1) is that of service of a copy of the application for certified proceedings on the respondent. The respondents herein do not contest that there was such service of the application, and instead blame the applicants for the delay in following up on the delivery of certified proceedings, which was an eventuality which was not within the applicants' control. Lastly, I also note that at the time of filing their application dated 28th November 2024, there was no delay on the part of the applicants, since the sixty days provided by Rule 84(1) of the Court of Appeal Rules started to run from 26th November 2024 as evidenced by the Certificate of Delay, and had not lapsed. However, the sixty days had lapsed by the time the application was heard on 29th July 2025.

11. I am therefore persuaded that there was no inordinate delay and the respondents did not suffer any prejudice in the circumstances.

Consequently, the application dated 28th November 2024 is found to be merited. The applicants are accordingly granted leave to file and serve a Record of Appeal against the judgment delivered on 26th October 2023 by the Employment and Labour Relations Court at Nairobi **(O. Kebira J.)** in **Cause No. 1545 of 2018**, within thirty (30) days of the date of delivery of this ruling. Each party shall meet their own costs of the application.

12. Orders accordingly.

Dated and delivered at Nairobi this 3rd day of October, 2025.

P. NYAMWEYA

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.