

**IN THE COURT OF**  
**APPEAL AT**  
**NAKURU**  
**(CORAM: WARSAME, J.A. IN CHAMBERS)**  
**CIVIL APPEAL (APPLICATION) NO. E136 OF**  
**2025**

**BETWEEN**

**KENYA PLANTATION AND AGRICULTURAL  
WORKERS UNION (KPAWU).....APPLICANT**

**AND**

**SARAH CHEPKOECH GLADYS.....1<sup>ST</sup> RESPONDENT**  
**GLADYS AYUMA ITABOLWA.....2<sup>ND</sup>**  
**RESPONDENT**

**SIMON SIMIYU.....3<sup>RD</sup>**  
**RESPONDENT JANESS**

**OKETCH.....4<sup>TH</sup> RESPONDENT**  
*(Suing as former members of the Applicant, for themselves  
and on behalf of 143 other former members of the union)*

**EASTERN PRODUCE KENYA LIMITED..... 5<sup>TH</sup>**  
**RESPONDENT**

*(An application for extension of serve a Notice of Appeal and  
Record of Appeal out of time against the judgment of the  
Employment and Labour Relations Court at Kericho (Justice  
Anna Ngibuini Mwaure) delivered on 11th July 2025 in High  
Court Constitutional Petition No. E002 of 2023)*

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**RULING**

1. Before me is a Notice of Motion Application dated 12th August  
2025 filed seeking *interalia*

- i. That this Honourable Court be pleased to extend  
time for such period as it may deem fit and proper*

*for the service of the Notice of Appeal dated 21st  
July 2025, filed on 21st July 2025, lodged on  
22nd July 2025,*

*and served on the Respondents on 5th August 2025 to be deemed as having been properly served.*

*ii. That upon the granting of the above prayer, the Record of Appeal herein filed by the Applicant on 31st July 2025 and served upon the Respondents on 5th August 2025, be deemed to have been duly and properly filed and served.*

2. The facts giving rise to this application are not in dispute. By a Judgment delivered on 11th July 2025, the Employment and Labour Relations Court at Kericho (Mwaure, J.) ordered the Applicant to pay to the 1st - 4th Respondents, for themselves and on behalf of 143 other former members of the applicant, a sum of Ksh. 400,000 each amounting to a cumulative total of KES 58,800,000 together with interest thereon at 14% per annum from the date of Judgment until payment in full and costs of the Petition.
3. Aggrieved by the said Judgment, the applicant through its in-house counsel filed a Notice of Appeal on 21st July 2025, which was lodged on 22nd July 2025 and a letter dated 21st July 2025 bespeaking certified copies of the Judgment and proceedings within the statutory period of fourteen (14) days.

4. The applicant alleges that its in-house counsel inadvertently failed to serve the Notice of Appeal on the respondents. They subsequently instructed the firm of Oraro & Company Advocates to represent it in the intended appeal. Acting on these instructions, the firm prepared and filed the Record of Appeal dated 30th July 2025, which was filed on 31st July 2025. The firm also prepared and filed an application for stay of execution under Rule 5(2)(b) of the Court of Appeal Rules on 31st July 2025. All this was done under the mistaken impression that the Notice of Appeal had been served on all parties by the applicant's in-house counsel.
5. On 7th August 2025 the 1<sup>st</sup>-4<sup>th</sup> respondents filed an application dated 6th August 2025, seeking, inter alia, orders to stay the hearing and determination of the applicant's stay application and orders to strike out and declare as incompetent both the Notice of Appeal lodged on 21st July 2025 and the Record of Appeal lodged on 30th July 2025.
6. The applicant avers that it was only upon perusal of the 1<sup>st</sup> - 4<sup>th</sup> Respondents' response to the stay application, as well as the application to strike out, that it became apparent to the

applicant's advocates that the Notice of Appeal, though filed, had not been served on the parties.

7. Upon discovering the omission, the applicant's in-house counsel took immediate steps to regularize the position by serving the Notice of Appeal upon the parties albeit out of time, on 6th August 2025. The applicant's advocates also promptly filed the present application to extend the time within which to serve the Notice of Appeal on 12th August 2025.
8. In summary, the applicant's case, as articulated on the face of the application and in the supporting affidavits of Saya Clifton (in-house counsel) and learned counsel Chacha Odera and the written submissions, is anchored on the following grounds :
  - a) The omission to serve the Notice of Appeal was purely an inadvertent mistake by the in-house counsel and it would be unjust to condemn the appeal for that reason.
  - b) The application is meritorious and has been brought in good faith, without any delay.
  - c) Upon discovering the omission, the Applicant immediately took steps to regularize the position.
  - d) The appeal has good prospects of success, and unless this application is allowed, the Applicant will be locked out from pursuing a meritorious appeal.

- e) The Respondents will suffer no prejudice should the application be allowed, since they will have an opportunity to be heard on the appeal.
- f) The Applicant's advocates have already served the respondents with a complete Record of Appeal, and no additional time will be wasted should the Court grant the prayers sought.

9. The 1st to 4th respondent filed written submissions and submitted that:

- a) The in-house counsel is an employee of the applicant and as such the applicant cannot claim that a mistake of counsel should not be visited upon them. Service of the Notice of Appeal was to be effected by the applicant themselves, by dint of the fact that their in-house counsel, who is an Advocate confirms that he was in full control and conduct of the matter before the trial court is their employee.
- b) There is no evidence of when the Applicant instructed its current Advocates to demonstrate that they were instructed outside the prescribed period of time within which they were supposed to serve the Notice of Appeal.
- c) By his own admission, the in-house counsel, Mr. Saya Clifton, states in his affidavit that he indeed

lodged the Notice of Appeal on 21st July 2025, but no reason is given as to why he never served it.

d) The applicant was undoubtedly indolent and the applicant's counsel only moved the Court to extend time within which to serve upon being alerted by the respondents through an application seeking to strike out the Notice of Appeal.

e) Even upon discovering the grave omission, the applicant took almost another seven (7) days within which they lodged this application dated 12th August 2025.

10. I have considered the application, the applicable law, and the submissions by both parties. The substantive issue for determination is whether the applicant is deserving of the reliefs sought, specifically whether time should be extended for service of the Notice of Appeal lodged on 21st July 2025 and served on 6th August 2025, and whether the Record of Appeal dated 30th July 2025 and filed on 31st July 2025 should be deemed as properly filed and served.

11. Rule 79(1) of the Court of Appeal Rules, 2022 provides:

*"An intended appellant shall, before or within seven days after lodging notice of appeal, serve copies thereof on all persons directly affected by the appeal."*

12. It is common ground that the Notice of Appeal was filed and lodged on 21st July 2025, but was only served on the Respondents on 6th August 2025, which is well outside the statutory seven-day period.

13. Rule 4 of the Court of Appeal Rules, 2022 empowers this Court to extend time. The principles governing applications for extension of time are well settled. In **Nicholas Kiptoo Arap Korir Salat -v- Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR**, the Supreme Court held:

*"It is common ground that an application for extension of time is not granted as of right. It is the duty of an applicant in such an application to place before the Court good and substantial reasons, or sufficient cause, so as to enable the Court to exercise its discretion judicially."*

14. The factors for my consideration in deciding whether to grant an extension of time include the length of the delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted and the degree of prejudice to the respondent if the application is granted. (See **Leo Sila Mutiso v Rose Hellen Wangari Mwangi, Civil Application No. Nai 255 of 1997**)

15. The delay in serving the Notice of Appeal is approximately 8 days beyond the statutory period. In my view, this delay is not inordinate. Even if the in-house counsel is an employee of the applicant, the principle remains that a litigant should not be punished for the inadvertent mistakes of their legal representative, particularly where the mistake is not deliberate and steps have been taken to remedy the situation promptly upon discovery. (see **Itute Ingu & another v Isumael Mwakavi Mwendwa [1994] eKLR**)
16. What is material is that upon discovery of the omission, immediate steps were taken to regularize the position. The evidence on record shows that the applicant discovered the omission upon reading the respondents' applications filed on 5th and 7th August 2025, and service was effected on 6th August 2025, with the present application filed on 12th August 2025. This demonstrates reasonable promptness.
17. Again, I find no evidence to support the respondents' assertion that the applicant's omission was deliberate. The facts show that the in-house counsel filed both the Notice of Appeal and the letter bespeaking proceedings within time. Their intention to appeal was

manifest. The failure to serve the notice of appeal appears to be an inadvertent oversight rather than a deliberate omission.

18. In my view, the respondents will suffer no prejudice if this application is allowed. They have been served with both the Notice of Appeal and the complete Record of Appeal. They will have a full opportunity to respond to the appeal on its merits. The delay of approximately 10 days in service does not occasion any material prejudice to their rights.
19. I allow the application with costs to the respondents.

**Dated and delivered at Nakuru this 21<sup>st</sup> day of October 2025.**

**M. WARSAME**

.....  
**JUDGE OF APPEAL**

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

**Signed**  
**DEPUTY REGISTRAR**