



Keter & 50 others v Browns Investments Plc & another; Human Rights Commission & 3 others (Interested Parties) (Civil Application E100 of 2024) [2025] KECA 1646 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KECA 1646 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E100 OF 2024
MA WARSAME, JA
OCTOBER 9, 2025**

BETWEEN

SAMMY KIPLANGAT KETER & 50 OTHERS APPLICANT

AND

BROWNS INVESTMENTS PLC 1ST RESPONDENT

LIPTON TEAS & INFUSIONS KENYA LTD 2ND RESPONDENT

AND

HUMAN RIGHTS COMMISSION INTERESTED PARTY

FEDERATION OF KENYA WOMEN LAWYERS INTERESTED PARTY

KENYA PLANTATION & AGRICULTURAL WORKERS UNION INTERESTED PARTY

RAINFOREST ALLIANCE INTERESTED PARTY

(An application for extension of time to file and serve Notice of Appeal and Record of Appeal out of time against the judgment of the High Court at Kericho (Justice J.K. Sergon) delivered on 20th September, 2023 in High Court Constitutional Petition No. E002 of 2023)

RULING

1. The application before me dated 16th October 2024 seeks extension of time to file and serve Notice of Appeal and Record of Appeal out of time and a stay of execution pending the determination of an intended appeal against the judgment delivered by Honourable Justice J.K. Sergon in Kericho High Court Constitutional Petition No. E002 of 2023.



2. The application is brought under Rules 4, 5(2)(b), 42 and 75 of the Court of Appeal Rules, 2010, Sections 3A and 3B of the *Appellate Jurisdiction Act*, Cap. 9, Laws of Kenya, Article 159(2)(d) of *the Constitution* of Kenya, 2010,
3. The dismissed petition concerned serious allegations of constitutional violations in the workplace, including systematic sexual harassment, discrimination, and alleged intentional infection of female workers with HIV/AIDS by line managers through quid pro quo harassment at tea plantations operated by the Respondents.
4. On 20th September, 2023, the High Court at Kericho delivered a ruling upholding the Respondents' preliminary objections dated 23rd March, 2023 and 24th April, 2023, and dismissed the applicants' amended petition dated 13th March, 2023, finding that the court lacked jurisdiction to entertain constitutional matters arising from employment relationships.
5. The learned trial judge held that such matters fell within the exclusive jurisdiction of the Employment and Labour Relations Court (ELRC) under Article 162(2) of *the Constitution* and Section 12(1) of the *Employment and Labour Relations Court Act* No. 20 of 2011.
6. The applicants were aggrieved by the judgment and despite requesting the typed proceedings, they did not file a Notice of Appeal within the statutory period. This application seeking extension of time to file the Notice of Appeal and Record of Appeal was subsequently filed over thirteen (13) months after the expiry of the statutory period.
7. According to the affidavit sworn by the first applicant, Sammy Kiplangat Keter, several interconnected reasons explain their failure to file the Notice of Appeal within the prescribed time. He contends that immediately after the ruling was delivered, the court file disappeared, making it impossible to obtain the necessary documentation for the appeal. Despite their efforts through several letters and requests, they faced lack of cooperation from judicial staff until they escalated the matter to the Deputy Registrar of the Judiciary in Nairobi, who eventually ensured the file was traced by the Kericho High Court Registry.
8. In addition, he contends that the majority of the applicants are women who were infected with HIV and AIDS by line managers through quid pro quo harassment at their workplace. Being on antiretroviral medication with what he describes as delicate health conditions, and having been placed under the Witness Protection Unit with their places of domicile scattered across the country, he argues that coordinating with forty-nine witnesses under protection presented insurmountable logistical challenges to their advocate who could not reach them for further instructions to lodge the appeal.
9. Additionally, the applicants claim that the trial judge kept the ruling in soft copy, and despite repeated requests and payment for certified copies, they were consistently told that the ruling was being typed. They characterize this as a deliberate plan by the Judge to collapse the fourteen-day appeal period. The coordination with the Witness Protection Agency and the need to meet with all witnesses under security protection allegedly took considerable time, with the final batch being met only in October 2023. They maintain that the appeal raises important issues, including whether the High Court lacks jurisdiction to determine applications for redress of violation or infringement of fundamental freedoms in the Bill of Rights.
10. The 1st Respondent has filed a detailed Replying Affidavit through Evalyne Ngeno, their Manager Legal Services, raising substantive objections to the application. The opposition is that the delay of over thirteen months is inordinate and unacceptable under established legal principles. They point to several letters dated 11th February 2024, 7th May 2024, 30th July 2024, and 6th August 2024 that were attached to the Applicants' own application, requesting typed proceedings so as to appeal. They argue



that the applicants had the intention of appealing throughout this period but failed to file a Notice of Appeal or seek an extension of time.

11. Of greater concern to the 1st respondent are allegations of forum shopping and abuse of process. They contend that following the High Court's dismissal on 20th September 2023, the applicants filed a Statement of Claim in the HIV & AIDS Tribunal on 3rd November 2023 raising the same subject matter and with the same parties. The 1st Respondent challenged the Tribunal's jurisdiction through a preliminary objection, but the Tribunal ruled against the 1st Respondent on 6th September 2024, finding that it did have jurisdiction to hear the matter. The 1st Respondent, having lost this jurisdictional challenge, has since appealed to the High Court Civil Division in HCCA NO. E1130 of 2024. Meanwhile, the applicants filed this extension application on 16th October 2024, creating multiple concurrent proceedings over the same subject matter.
12. The 1st respondent further challenges the witness protection claims, noting that correspondence from the Witness Protection Agency suggests only fourteen persons were recommended for protection, not all forty-nine witnesses as broadly claimed. They argue that the applicants' conduct demonstrates a lack of genuine commitment to prosecuting their original appeal, instead preferring to forum shop until finding a favorable venue.
13. The discretion to extend time is guided by well established principles developed through consistent jurisprudence. In *Gitetu v Kenya Commercial Bank Ltd* [2009] KLR 545 this court categorically held that for an application made under Rule 4 of the Court of Appeal Rules to succeed, the court ought to be guided by consideration of factors including, but not limited to, the period of delay, reason for the delay, the degree of prejudice to the respondent if the application is granted and whether the intended appeal is arguable.
14. Those principles were reiterated by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat -v- Independent Electoral and Boundaries Commission & 7 others* [2015] eKLR where the Court emphasized the discretionary nature of the grant of leave to file an appeal out of time and that the applicant seeking extension of time has the burden of laying a basis to the satisfaction of the Court
15. The central issue in this application is whether the applicants have met the aforementioned threshold. Having considered the submissions and the material before me, I find that this case presents exceptional circumstances that warrant the exercise of discretion in favour of the applicants.
16. While the 1st respondent's objections are duly noted, I am persuaded that the allegations made against the High Court Registry regarding the missing file and delays in availing certified copies deserve consideration. The record shows persistent efforts by the applicants to obtain the necessary documentation through multiple letters dated 11th February 2024, 7th May 2024, 30th July 2024, and 6th August 2024. Furthermore, there is correspondence from the applicants' counsel to the Witness Protection Agency requesting assistance in locating the witnesses for purposes of obtaining instructions to appeal, which demonstrates genuine intent to prosecute the appeal.
17. More fundamentally, the intended appeal raises weighty issues.

The issue of whether the High Court lacks jurisdiction to determine applications for redress of violations of fundamental freedoms in the Bill of Rights, or whether such alleged lack of jurisdiction divests the court of power to transfer the matter to the relevant court with jurisdiction, is not a frivolous point of law. These are matters of significant issues that merit consideration by this court and I think it is important to give the applicants a chance to canvass their case.



18. In the circumstances, I am satisfied that this is a case where the discretion should be exercised in the applicants' favour. Consequently, the application is allowed. I direct the notice of appeal and record of appeal be filed within fourteen (14) days with no orders to cost.

DATED AND DELIVERED AT NAKURU THIS 9TH DAY OF OCTOBER 2025.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

