

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

CIVIL APPLICATION NO. E707 OF 2024

BETWEEN

MARGARET MUMBUA MATHEKA.....APPLICANT

VERSUS

**INTERCONTINENTAL CONSULTANTS &
TECHNOCRATS PVT. LIMITED**

.....
RESPONDENT

(An application for extension of time to file and serve a Notice of Appeal from the Ruling by delivered by the Employment and Labour Relations Court at Nairobi (L. Ndolo J.) on 14th November 2024 in Miscellaneous Application No. E173 of 2024)

RULING OF THE COURT

1. The applicant herein is seeking extension of time to file a Notice of Appeal out of time, against the ruling delivered on 14th November 2024 by the Employment and Labour Relations Court at Nairobi (***L. Ndolo J.***) in **Miscellaneous Application No. E173 of 2024**. The Court held in the said ruling that it lacked jurisdiction to grant the orders sought by the applicant, namely to be paid Kshs.2,500,615/= by the respondent as awarded by the Director of Occupational Safety and Health Services, and

Kshs.58,050/= for treatment, plus costs and interest.

2. The prayer for extension of time is in an application dated 17th December 2024, which is expressed as being brought pursuant to sections 3A and 3B of the Appellate Jurisdiction Act and Rule 4 of the Court of Appeal Rules, and is supported by an affidavit sworn on even date by Kimanzi

E. Wambua, the applicant's advocate. The applicant averred that the failure to file Notice of Appeal within time was a mistake occasioned by herself, whereby she gave her advocates instructions to appeal after time had passed. Further, that the intended appeal raises arguable issues with overwhelming chances of success on the issue of Employment and Labour Relations Court ("ELRC") having the jurisdiction. In addition, that there has been no inordinate delay in filing this application, and the respondent will not suffer any prejudice if the orders sought are granted.

3. The applicant annexed copies of the subject ruling delivered on 17th December 2024 by ELRC, the memorandum of appeal, the notice of appeal and a copy of an email dated 15th December 2024 from the applicant instructing her advocates. The applicant's advocates additionally filed written submissions dated 23rd 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 respondent opposed the application by way of a replying affidavit sworn on 4th July 2025 by Geoffrey Kamau, its General Manager, and submissions of even date. The objection was based on the grounds that this court's jurisdiction to admit an appeal out of time had not been properly invoked, as no good and sufficient cause for not filing the appeal in time had been demonstrated. It was averred that whereas the applicant had produced an email dated 15th December 2024 communicating her decision to her advocates to appeal the ruling delivered on 14th November 2024, she had not produced the evidence on when she became aware of the ruling. In addition, that no arguable appeal had been demonstrated, since all the all the issues raised in the draft memorandum of appeal were addressed extensively in the ruling of the court, and the respondent stands to suffer prejudice should the application be allowed including additional costs incurred defending the appeal if allowed. These averments were repeated in written submissions dated 4th July 2025 filed by the respondent's advocates, together with supporting judicial authorities.

5. 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 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. I note that at the time of filing the application dated 17th December 2024, there was approximately a one (1) month delay from the date of delivery of the ruling of 14th November 2024, and about eighteen (18) days’ delay from the date the lapse of the fourteen (14) days within which the Notice of Appeal was required to have been lodged, being 28th November 2024. The applicant has explained that she gave instructions late, and has availed evidence of her instructions to the applicant, which were made one month after delivery of the ruling. It is my view that not only has the delay been sufficiently explained, but that the delay was not inordinate in the circumstances of this application. In addition, the respondent has not demonstrated any real prejudice it will suffer if time is extended, and has raised speculative risks if the appeal is

allowed. It is also notable in this respect that the applicant has a right to appeal to this Court, whatever the outcome of the appeal, and has demonstrated her grievance with the findings in the subject ruling.

9. Consequently, the application dated 17th December 2024 is found to be merited. The applicant is accordingly granted leave to file and serve a Notice of Appeal against the ruling delivered on 14th November 2024 by the Employment and Labour Relations Court at Nairobi **(L. Ndolo J.)** in **Miscellaneous Application No. E173 of 2024** , within fourteen (14) days of the date of delivery of this ruling. Each party shall meet their own costs of the application.
10. Orders accordingly.

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

P. NYAMWEYA.

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JUDGE OF APPEAL

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

Signed

DEPUTY

REGISTRAR.