



**China State Construction Engineering Corporation (K) Limited v Mutembei
(Appeal E004 of 2025) [2025] KEELRC 2989 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2989 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
APPEAL E004 OF 2025
L NDOLO, J
OCTOBER 30, 2025**

BETWEEN

**CHINA STATE CONSTRUCTION ENGINEERING CORPORATION (K)
LIMITED APPLICANT**

AND

KEN MUTEMBEI RESPONDENT

RULING

1. This ruling determines the Notice of Motion dated 15th July 2025, by which the Applicant seeks leave to lodge an appeal against the entire judgment in Isiolo MCELRC E002 of 2024, out of time. The Applicant further pursues stay of execution of the judgment, pending the hearing and determination of the intended appeal.
2. The application is supported by an affidavit sworn by Raphael Ayimba and is premised on the following grounds:
 - a. That the trial court delivered its judgment in MCELRC 002 of 2024, in favour of the Respondent;
 - b. That the Applicant being aggrieved by the said judgment, wishes to challenge it, but had delayed to do so because shortly after delivery of the judgment on 28th May 2025, the government project which the Applicant was undertaking, experienced unforeseen financial and administrative challenges, leading to suspension of operations and recall of the Applicant's key personnel back to China;
 - c. That due to the sudden withdrawal of its project staff from Kenya, including those responsible for legal and administrative matters, the Applicant was unable to give timely instructions to its Advocates to file an appeal within the statutory period;



- d. That the Applicant only became fully aware of the status of the matter upon re-engagement with its Advocates and has since taken prompt steps to file this application upon resolution of the logistical and communication barriers caused by the project disruption;
 - e. That the delay in filing the appeal was neither deliberate nor unreasonable, and the Applicant asks the Court to exercise its discretion in favour of substantive justice;
 - f. That the intended appeal is not frivolous but raises substantial and arguable questions of law and fact, including whether the learned Magistrate erred in assessing the quantum of damages and in making findings contrary to the evidence on record;
 - g. That the Applicant will suffer substantial loss, if leave to appeal and stay of execution is not granted as it would be exposed to execution proceedings to their loss and detriment;
 - h. That the Applicant has acted with utmost honesty and diligence in pursuing its right of appeal and asks the Court to grant leave in the interest of justice, and to prevent the Applicant from being locked out of a rightful hearing on appeal due to procedural lapses;
 - i. That the Respondent shall suffer no prejudice if the application is allowed;
 - j. That this Court has unfettered jurisdiction to grant the prayers sought.
3. The Respondent opposes the application by his replying affidavit sworn on 7th October 2025. He states that the application has no leg to stand as it is filed inside an inexistent appeal christened ELRCA/E004/2025.
 4. The Respondent depones that the Applicant ought to have filed a miscellaneous application to be allowed to lodge an appeal out of time, before attempting to file a substantive appeal.
 5. The Respondent contends that the judgment of the trial court was delivered on 28th May 2025, in the presence of Counsel for the Applicant, meaning that the Applicant was well apprised of the judgment and its contents.
 6. It is deponed that the Applicant has not furnished any reasons for the delay in lodging an appeal against the judgment of the trial court. The Respondent states that the Applicant has not produced any proof that its activities in the country had been suspended.
 7. The Respondent accuses the Applicant of dishonesty, stating that Counsel for the Applicant had been in communication with its Counsel, with a view to settling the claim.
 8. According to the Respondent, while his Counsel was waiting for feedback from the Applicant's Counsel, they were secretly filing the present application seeking stay of execution and attempting to file an appeal through the back door.
 9. The Respondent further depones that the Applicant had purported to file an appeal in the High Court at Isiolo vide Isiolo HCCA/E028/2025: China State Construction Engineering Corporation Ltd v Ken Mutembei, which was withdrawn pursuant to directions that it had been filed in the wrong forum.
 10. The Respondent takes the view that the Applicant is a dishonest litigant who has come to court with unclean hands, and is not deserving of the favours of equity.
 11. The Respondent adds that the Applicant has not given any undertaking to furnish security for the due performance of the decree. He concludes that being a successful litigant baby-sitting the judgment and orders of the trial court, he continues to suffer prejudice.



12. Order 50 Rule 6 of the Civil Procedure Rules, provides for extension of time generally, in the following terms:
 6. Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.
13. There is firm jurisprudence that the power to enlarge time under the foregoing provision is discretionary (see Margaret Njoki Kamau v Reuben Ndivo Mwangi [2021] KEELC 4616 (KLR))
14. The Supreme Court, in its decision in Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] KESC 12 (KLR) established the following principles to be applied in considering applications for extension of time:
 - a. 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;
 - b. A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay.
15. In his replying affidavit in opposition to the application, the Respondent accuses the Applicant of mala fides. In this regard, the Respondent deposes that while the Applicant's Counsel was engaging the Respondent's Counsel on settlement of the decretal sum, the Applicant was busy engaging the court system to stay the judgment.
16. The Applicant did not bother to respond to this serious allegation and there is documentary evidence on record showing communication between Counsel for the parties.
17. The first principle established by the Supreme Court in Salat (supra) is that:

“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.”
18. ‘Those who come to equity must come with clean hands’ is a maxim that is well known by every law student. By failing to show its hand regarding ongoing communication towards settlement of the



decretal sum, the Applicant concealed material facts from the Court and thus placed itself outside the mercy of equity.

19. Moreover, the Applicant did not avail any evidence to back its averment that its operations in the country had been suspended and its key personnel recalled back to China.
20. Overall, the Applicant has failed to convince the Court that it is deserving of the exercise of discretionary power in its favour.
21. The application dated 15th July 2025 is therefore dismissed with costs to the Respondent.
22. Orders accordingly.

DELIVERED VIRTUALLY THIS 30TH DAY OCTOBER 2025

LINNET NDOLO

JUDGE

Appearance:

Ms. Muthoni for the Applicant

Mr. Maheli for the Respondent

