



REPUBLIC OF KENYA



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Kimathi v Hunjan & 10 others (Sued as the Committee of Nanyuki Club) (Civil Application 111 of 2025) [2025] KECA 1710 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1710 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 111 OF 2025
K M'INOTI, JA
OCTOBER 24, 2025**

BETWEEN

ASHFORD KIMATHI APPLICANT

AND

KULDIP HUNJAN 1ST RESPONDENT

JOSEPH MWANGI 2ND RESPONDENT

SOHAN AGGARWAL 3RD RESPONDENT

STELLA SYONZI 4TH RESPONDENT

KEITH PEARSON 5TH RESPONDENT

MAUREEN KIAMA 6TH RESPONDENT

CHARLES GIKARIA 7TH RESPONDENT

WILLIAM NJAMU NJOROGE 8TH RESPONDENT

F. M. MATHENGE 9TH RESPONDENT

MICHAEL K. THOMAS 10TH RESPONDENT

JUDY NDAI 11TH RESPONDENT

SUED AS THE COMMITTEE OF NANYUKI CLUB

(Application for extension of time to appeal from the judgment and decree of the Employment and Labour Relations Court at Nanyuki (O.N. Makau, J.) dated 4th October 2024 in ELRCC No. E027 of 2023)



RULING

1. The applicant, Ashford Kimathi, lodged a claim in the Employment & Labour Relations Court (ELRC) at Nanyuki against the respondents, members of the Committee of Nanyuki Club, for unfair and unlawful termination of employment. By a judgment dated 4th October 2024, the ELRC found that the applicant had not proved his claim for unfair and unlawful termination, but awarded him Kshs 265,000 as unpaid salary with interest at court rates, and costs.
2. The applicant lodged a notice of appeal on 18th October 2024, which was within the period prescribed by rule 77(2) of the Court of Appeal Rules. On the same day, the applicant applied for certified copies of the proceedings and served the respondents' counsel electronically with both the application for certified copies and the notice of appeal.
3. The court availed certified copies of the proceedings to the applicant's advocates on 28th November 2024. After that, nothing appears to have happened until 29th July 2025, when the applicant filed the present application for extension of time to file the appeal.
4. The reasons given for failure to file the appeal within the time prescribed by rule 84(1) are a breakdown of communication between the applicant and his previous advocates and the applicant's illness since September 2024.
5. The above points are reiterated in the applicant's written submissions dated 29th September 2025 where he relies on the decision of this Court in *Andrew Kiplagat Chemaringo v. Paul Kipkorir Kibet* [2018] KECA 701 (KLR) for the principles that guide the Court in an application for extension of time.
6. The respondent's opposed the application vide a replying affidavit sworn by the 2nd respondent on 30th September 2025, where it was averred that the applicant's delay is inordinate and is neither explained nor justified. It was further averred that the application bespeaking proceedings was not served upon the respondent and therefore the applicant could not rely on a certificate of delay. Further, it was contended that the applicant's medical reported did not indicate that he was unable to work.
7. In their written submissions dated 2nd October, the respondents further contend that having received the certified copies of the proceedings on 28th November 2024, the applicant has not explained the delay from that date to 29th July 2025. They cite the decision in *Joseph Kirweya Kahwai & 5 others v. Charles Kirweya & 5 Others* [2011] eKLR and submit that the applicant is obliged to place before the court sufficient material explaining the reason for the inordinate delay. They also argue that they stand to suffer prejudice as they have moved on after the determination of the applicant's claim.
8. I have carefully considered this application. While it is true that the discretion of the Court to extend time under rule 4 of the Court of Appeal Rules is wide unfettered, nevertheless, that discretion has to be exercised judiciously and on reasons rather than captiously and arbitrarily. A party that seeks extension of time bears the onus of explaining to the court's satisfaction why there was no compliance with the prescribed rules. In *Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others* [2014] eKLR, the Supreme Court held, among others, as follows as regards extension of time:
 - 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 for extension of time has the burden of laying a basis to the satisfaction of the court.



- ii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis...”
9. The factors that guide the Court in deciding whether or not to extend time were explained as follows in *Imperial Bank Ltd (In Receivership) & Another v. Alnashir Popat & 18 Others* [2018] eKLR:

“Some of the considerations to be borne in mind while considering an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”
10. In this application, the judgment of the ELRC was rendered on 4th October 2024 and the applicant lodged the notice of appeal on 18th October 2024, which was within the prescribed 14 days. On the same day the applicant applied for certified copies of proceedings, which was also within the preceded 30 days from the date of the judgment of the ELRC.
11. From the evidence on record, I do not agree with the respondents’ contention that the letter bespeaking the proceedings was not served upon their counsel. On record is an email from the applicant’s advocates dated 18th October 2024 and sent at 4.25 pm forwarding to the respondents’ former advocates the notice of appeal and letter bespeaking proceedings.
12. Having received the proceedings on 28th November 2024, the applicant could have filed the appeal within 60 days from the date of the notice of appeal (by 17th December 2024) or at the very latest, within 60 days from 28th November 2024, the date on which he received the certified copies of the submissions. He did neither and by the time he applied for extension of time on 29th July 2025, there was a delay of about eight months.
13. Whether delay is inordinate is dependent on the circumstances of each case, but a simple indicator is the length of the delay relative to the prescribed time. The prescribed time for filing the appeal time is 60 days, but the applicant is off by eight months, which clearly is inordinate delay.
14. Beyond the delay, the other important consideration is the explanation for the delay. Inordinate delay may still be sufficiently explained. The applicant has put forth two explanations, namely breakdown of communication with his former advocates and his illness.
15. Whereas there is no much substance in the first explanation for delay when considered on its own, when considered together with the second expansion, the breakdown of communication with the advocates is understandable. The second explanation is on account of the applicant’s illness.
16. Although the respondent’s pour cold water on the applicant’s illness, there is on record a medical report dated 27th July 2025 which indicates that the applicant was diagnosed hypertensive on 5th September 2024 and had, among others, suffered a mild stroke and was unable to walk without support. The report indicates that he was attending clinic every fortnight for physiotherapy from 5th September 2024. I would take it that it was this condition that made it impossible for the applicant to follow up on his appeal with his former advocates.



- 17. Purely on the second explanation, I would find the delay reasonably explained. I am not able to say, on a prima facie basis, that the applicant’s intended appeal is frivolous or that in the absence of extension of time, the applicant will suffer less prejudice than the respondents bearing in mind that he has a right of appeal which is underpinned by *the Constitution*.
- 18. For the foregoing reasons, I allow the application for extension of time and direct the applicant to file the appeal within 14 days from the date of this ruling. Failure to do so, this application shall stand dismissed. Costs of the application shall abide the result of the intended appeal. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 24TH DAY OF OCTOBER, 2025.

K. M’INOTI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

