

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: MUSINGA (P), (IN CHAMBERS))

CIVIL APPLICATION NO. NAI E101 OF 2025

BETWEEN

JOSEPH MUTHUSI WAMBUA.....APPLICANT

AND

SAVANNAH CEMENT LIMITED.....RESPONDENT

*(Being an application to file an appeal out of time from the judgment of the Employment and Labour Relations Court at Nairobi (**Byram Ongaya, J.**) delivered on 15th November 2024*

in

ELRC Case No. E004 of 2022)

****** RULING**

1. The applicant's notice of motion dated 13th February 2025 seeks leave to file an appeal out of time in respect of the judgment of **Byram Ongaya, J.** delivered on 15th November 2024 in Employment and Labour Relations Court (ERLC) in **ELRC No. E004 of 2022**. The applicant also seeks leave to serve the notice of appeal out of time.
2. In his affidavit in support of the application, the applicant,

states that on 15th November 2024 the trial court dismissed

his claim where he sought a declaration that his summary dismissal from the respondent's employment was unfair. He alleged that he became aware of the judgment in January 2025 when his advocate notified him of the judgment, by which time the period of filing an appeal had already lapsed. His advocate was not willing to file an appeal on his behalf, and so he applied for certified copies of the proceedings and judgment. The applicant states that the delay is not inordinate and the same has been well explained.

3. The applicant's application is not opposed.
4. I have considered the application in light of the principles set by this Court in a plethora of its decisions including **Thuita Mwangi vs Kenya Airways Limited, Civil Appeal No. 162 of 2002** where the Court of held:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

5. I am satisfied that the short period of delay has been well explained by the applicant. Consequently, I allow the application and direct the applicant to file and serve the notice of appeal as well as the record of appeal within **30 days** from the date hereof. The costs of the application shall be in the appeal

Dated and delivered at Nairobi this 24th day of October 2025.

D. K. MUSINGA, (PRESIDENT)

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.