

**IN THE COURT OF  
APPEAL AT  
KISUMU**

**(CORAM: KIMARU, JA (IN  
CHAMBERS))**

**CIVIL APPLICATION NO. 134 OF  
2025 BETWEEN**

**WORLD VISION KENYA.....APPLICANT**

**AND**

**CECILIA MUTANU MUSAU.....RESPONDENT**

(Being an application for extension of time from the Judgment of the Employment and Labour Relations Court of Kenya at Kisumu (S.

Radido, J) dated 31<sup>st</sup> January, 2024

**in**

**ELRC No. E049 of 2023)**

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**RULING**

1. **World Vision Kenya**, the applicant herein moved this Court essentially under **Rule 4** of the **Court of Appeal Rules** seeking to be granted extension of time to lodge and serve the notice of appeal out of time against the Judgment of the Employment and Labour Relations Court (ELRC) which was delivered on 31<sup>st</sup> January, 2024. The present application was filed before this Court on 15<sup>th</sup> September, 2025. The

applicant explained the reason for the delay in lodging the appeal in time was due to a

*bona fide* mistake and systematic administrative challenges with the Court's Case Tracking System (CTS) which hampered the applicant from obtaining typed copies of the proceedings in time. The applicant pleads with the Court to allow it to exercise its right of appeal, as in its view, the intended appeal will raise weighty, arguable and substantial questions of law and jurisprudence including whether renewable fixed term contracts give rise to enforceable legitimate expectations. The applicant points out that the respondent will suffer no prejudice since she has already been paid the decretal sum as decreed by the ELRC. The applicant urged the Court to consider the principles of justice, fairness and equity so that it can be given a chance to ventilate its appeal before this Court. The application is supported by the annexed affidavit of **Anastacia Kimaku**, Legal and Governance Officer of the applicant and other grounds stated on the face of the motion.

2. The application is opposed. The respondent, **Cecilia Mutanu Musau**, swore a replying affidavit in opposition to the application. She deponed that the applicant had not

given good or sufficient reasons for the delay in lodging the appeal in time.

She asserted that the thrust of the applicant's appeal had been compromised by consent recorded before the ELRC on 26<sup>th</sup> February, 2024. Subsequently, thereafter, the applicant filed an appeal which, however, was struck out on 4<sup>th</sup> November, 2024 by this Court as it was filed out of time without the leave of the Court. The appeal was **Civil Appeal No. E104 of 2024**. The respondent was not convinced that the applicant had a good appeal in light of alleged sharp practices and falsification of documents. The respondent deponed that there was inordinate delay in bringing the present application before this Court noting that the applicant had filed a similar application for extension of time before the ELRC which had been struck out. The respondent maintained that this Court lacked jurisdiction to review a decision of a three (3) Judge bench of this Court by considering the merit of this application. She therefore urged the Court to dismiss the application.

3. Counsel for both parties filed written submission in support of their respective clients' opposing positions. The Court has had the benefit of perusing them. The first issue that came

to the

fore for this Court's determination is whether it has jurisdiction to hear and determine the application.

4. According to the respondent, once the full bench of this Court struck out the applicant's appeal i.e **Civil Appeal No. E104 of 2024**, this Court lacked jurisdiction to entertain the present application. With the greatest respect to the respondent, when this Court struck out the applicant's appeal in **Civil Appeal No. E104/20224**, it did so on account of procedural mistakes that the applicant had taken in filing the appeal out of time without seeking the leave of this Court. By striking out the appeal, the Court did not foreclose the applicant's right of appeal. What the Court did was to clear the deck so that the applicant may be allowed to go back to the drawing board and properly commence the appeal process before this Court.
5. When an appeal or any suit for the matter is struck out due to procedural misadventure of the Rules governing the filing of such appeals or suits by a litigant, it does not preclude the affected party from filing another proper appeal or suit before the Court. The position is different where the Court

dismisses an appeal or suit. In that case, the affected party will be

prevented from filing another similar suit or appeal. The respondent's objection to the applicant's application lacks merit and is disallowed.

6. As regards the merit of the application, it was clear to this Court that, despite of the procedural mishaps by the applicant, that the applicant is desirous of having its day in Court on appeal. Having considered the reasons advanced by the applicant, this Court is persuaded that the said reasons are sufficient and the delay excusable. As was held by this Court in **Edith Gichugu Koire V. Stephen Njagi**

**Thoiti [2024] KECA 485 (KLR):**

***“...exercise (of discretion) under Rule 4 is unfettered and does not require establishment of “sufficient reasons”. Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this Court but not limited to, the period of delay, the reasons for delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, among others...”***

7. In the present application, as stated by the applicant (and confirmed by the respondent), the decretal sum has already been paid to the respondent. The respondent will therefore

not suffer any immediate prejudice. The applicant is pursuing the

appeal as a matter of principle and with a view to obtaining clarification on the law as regards fixed term contracts in employment contracts.

8. In the premises therefore, the application has merit. It is hereby allowed. The applicant is granted extension of time to lodge and serve the notice of appeal. The same shall be filed and served within **seven (7) days** of today's date. The record of appeal shall be filed and served within **thirty (30) days** of today's date.

9. The costs of the application shall abide the outcome of the appeal.

**Dated and delivered at Kisumu this 19<sup>th</sup> day of November, 2025.**

**L. KIMARU**

.....  
**JUDGE OF  
APPEAL**

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

***Signed***

**DEPUTY REGISTRAR**