

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: W. KARANJA, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. E493 OF 2025

BETWEEN

OWINO JACOB CATTWRIGHT.....APPLICANT

AND

**PUBLIC SERVICE COMMISSION.....1ST
RESPONDENT PRINCIPAL SECRETARY, STATE DEPARTMENT FOR
LANDS AND PHYSICAL PLANNING.....2ND
RESPONDENT**

(Being an application for extension of time to file an appeal out of time against the entire decree and judgment of the Employment and Labour Relations Court at Nairobi (B. Ongaya, J.) dated 21st February 2025

in

ELRC Cause No. E040 of 2024

R U L I N G

1. Owino Jacob Cattwright, has moved this Court by way of a motion on notice dated 5th August 2025, which is brought under, *inter alia*, **Rule 4** of the **Court of Appeal Rules**. He seeks extension of time to file an appeal against the judgment of the Employment and Labour Relations Court (Hon. Byram Ongaya J.) dated 21st February 2025.
2. The motion is premised on the grounds on its face and supported

by an affidavit sworn by the applicant on even date. The applicant deposes that he was aggrieved by the said judgment and he filed the

notice of appeal on 28th February 2025, which was within the timelines prescribed by the **Rules** of this Court. He states that his counsel on record requested for typed proceedings from the court and also served the letter requesting for the proceedings on the respondents along with the notice of appeal within the prescribed time.

3. From the certificate of delay annexed to the supporting affidavit, the same was issued on 5th June 2025, but the record was not filed within 60 days as would have been expected after the certificate of delay was issued.
4. The application is opposed by the 1st respondent vide an affidavit sworn by Paul Famba, the 1st respondent's CEO/Secretary, dated the 12th November 2025. From the depositions in the affidavit, the 1st respondent's only complaint is that it was not served with the notice of appeal as provided for under **Rule 77** of the **Court of Appeal Rules**.
5. I note, however, that this is an application or extension of time to file the appeal and not one for striking out the notice of appeal on grounds that the same was not served on the 1st respondent. Should

the 1st respondent wish to pursue that point, it is at liberty to move the Court appropriately within the relevant provisions of the **Court of Appeal Rules**.

6. Both parties filed submissions, which I have considered. As stated earlier, the applicant's counsel avers that he sent the letter bespeaking the proceedings to the respondents. It is clear that neither the notice of appeal nor the letter bespeaking proceedings were served on the 1st respondent, but that said, as stated earlier, this is not the proper forum for striking out the notice of appeal.
7. The power to extend time under **Rule 4** of this Court's **Rules** is an exercise of discretion and the factors to be considered were stated in

Fakir Mohammed -vs- Joseph Mugambi & 2 others [2005] eKLR

(Civil Application No. Nai. 332 of 2004) where the Court held that;

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they

are relevant. The period of delay, the reason for the delay, (possible) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is

granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factor.”

See also **Mwangi -vs- Kenya Airways Ltd (2003) KRL 486.**

8. In this case the applicant did not even need to seek extension of time if he had evidence that he had served the letter bespeaking the proceedings on the respondents. I say so because the applicant had 60 days to file the record of appeal upon receipt of the typed proceedings and certificate of delay. Instead of doing so, he waited until the 60th day to move to this Court with this application. He cannot, therefore, blame the delay in typing of proceedings for his inactivity. I note further, that the applicant had not tendered any explanation for the delay between 5th June 2025 and 5th August 2025 when this application was filed.
9. My view of this matter is that counsel for the applicant is totally oblivious of the provisions of **Rule 84(2)** the **Court of Appeal Rules**; particularly the proviso thereto, and the jurisprudence around it. I, nonetheless, note that the delay involved was not too

long, and I will not punish the applicant for counsel's ineptitude.
I allow the

application and order that the record of appeal be filed and served within 14 days from the date hereof, failing which the said leave will automatically lapse.

Dated and delivered at Nairobi this 28th day of November 2025.

W. KARANJA

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

