



Chuna Co-operative Savings & Credit Society Limited v Osawo (Civil Application E501 of 2025) [2025] KECA 1992 (KLR) (21 November 2025) (Ruling)

Neutral citation: [2025] KECA 1992 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E501 OF 2025
DK MUSINGA, JA
NOVEMBER 21, 2025**

BETWEEN

CHUNA CO-OPERATIVE SAVINGS & CREDIT SOCIETY LIMITED APPLICANT

AND

VITALIS OTIENO OSAWO RESPONDENT

(Being an application for extension of time to file an appeal against the Judgment of the Employment and Labour Relations Court at Nairobi (Abuodha, J.) delivered on 27th September 2024 in ELRC Cause No. 606 of 2019)

RULING

1. The applicant filed a notice of motion dated 13th August 2025 under certificate of urgency. The applicant seeks extension of time to file and serve a notice of appeal, a record of appeal and/or memorandum of appeal against the judgment of Abuodha, J. delivered on 27th September 2024 in Nairobi Employment and Labour Relations Court (ELRC) Cause No. 606 of 2019. The applicant also seeks to have the memorandum of appeal and the record of appeal already filed to be deemed as properly filed and admitted on record.
2. The applicant’s application is supported by affidavit sworn by Joshua Tanui, its Chief Executive Officer who states, inter alia, that the applicant is aggrieved by the judgment delivered by the trial court wherein the respondent was awarded a sum of Kshs. 7,119,820 allegedly on account of gratuity under a Collective Bargaining Agreement (CBA), which the applicant maintains was neither applicable nor binding; that immediately upon learning of the said judgment in November 2024 (the applicant not having been served with any judgment notice), it instructed its advocates to initiate an appeal; that their advocates filed an application dated 17th December 2024 before the trial court seeking leave to appeal out of time and stay of execution of the impugned judgment but the application was dismissed on 13th



June 2025 on the basis that the trial court lacked jurisdiction to grant extension of time to appeal to this Court.

3. The deponent further states that the delay in filing the notice of appeal and record of appeal was neither deliberate nor negligent, but was caused by a bona fide error on jurisdiction, and the applicant acted in good faith throughout. The applicant contends that the intended appeal raises serious and arguable issues, among them being whether the learned trial judge erred in applying the CBA retrospectively; whether the computation of gratuity was based on the correct remuneration terms; whether the respondent was entitled to gratuity under the law; and whether the award constituted unjust enrichment.
4. The applicant has since requested for certified copies of the proceedings and judgment and filed a notice of appeal, albeit out of time. The applicant states that the respondent will not suffer any prejudice if the orders sought are granted, and pleads with this Court to exercise its discretion in its favour.
5. Although the application was served upon the respondent sometime in August 2025 and the Court issued directions regarding filing of replying affidavit and submissions, the respondent has not filed anything. Vide hearing notices issued on 31st October 2025 and 14th November 2025, parties were notified that the application was slated for hearing on 18th November 2025, and the hearing would be by way of written submissions only.
6. Although the application is not opposed, I am duty bound to consider the application on its merits.
7. In an application for extension of time under rule 4 of this Court's Rules, the Court exercises unfettered discretion, but the discretion has to be exercised judiciously. In *Nicholas Kiptoo Arap Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] KESC 12 (KLR), the Supreme Court set out the principles that a Court should consider in exercise of its discretion in an application for extension of time. It stated that the underlying principles that a court should consider in exercise of such discretion are:
 - “(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;
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - ii. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - ii. Whether the application has been brought without undue delay; and,
 - ii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
8. The applicant has candidly explained the cause of the delay, being that there was no service of a judgment notice, and the applicant became aware of the judgment in November 2024. It then instructed its advocates to file an application for stay of execution and for leave to file an appeal out of time.



9. Although the applicant did not annex to its application a copy of the impugned judgment, considering the arguments advanced in the applicant's affidavit and the proposed grounds of appeal, I do not think that the intended appeal is frivolous. The applicant intends to exercise its constitutional right of appeal but cannot do so unless the orders sought are granted. The respondent will not suffer any prejudice if leave to file the appeal out of time is granted.
10. Consequently, I grant leave to the applicant to file and serve notice of appeal and the record of appeal within the next fourteen (14) days from the date of this ruling. I am unable to order that any notice of appeal and memorandum of appeal already filed, (if any), be deemed as properly filed because I did not see the same, and even if they are there, there is no evidence that they were duly paid for.
11. I make no order as to costs since the respondent did not file anything in opposition to the applicant's application.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

