

**IN THE COURT OF  
APPEAL AT  
ELDORET**

**(CORAM: GACHOKA, J.A. - IN  
CHAMBERS) CIVIL APPLICATION NO.  
E062 OF 2025**

**BETWEEN**

**IMMACULATE NYASEBA MARWA.....APPLICANT**

**AND**

**UNIVERSITY OF EASTERN AFRICA BARATON.....RESPONDENT**

*(An application for extension of time to file a memorandum of appeal and record of appeal against the judgment and decree of the Eldoret Employment and Labour Relations Court (M. Onyango, J.) delivered on 6<sup>th</sup> March 2025*

*in*

**ELRC Cause No. 45 OF  
2020)**

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**RULING OF THE COURT**

1. In her Notice of Motion dated 25<sup>th</sup> September 2025, the applicant's application is hinged on the provisions of Rule 4 of the Court of Appeal Rules. She seeks for the following verbatim orders:

**1. THAT the applicant be granted leave to lodge and file a memorandum of appeal and record of appeal out of time against the judgment in Eldoret ELRC No. 45 of 2020 delivered on 6<sup>th</sup>**

**March 2025;**

- 2. THAT the annexed draft memorandum of appeal be deemed as duly filed;**
- 3. THAT this Honourable Court be pleased to make any other order it deems fit in the circumstances.**

2. The application is grounded on the reasons set forth in the application and the applicant's supporting affidavit sworn on even date as follows: the applicant is dissatisfied with the judgment of the trial court delivered on 6<sup>th</sup> March 2025 in **Eldoret ELRC No. 45 of 2020**. Subsequently, the applicant lodged her notice of appeal dated 7<sup>th</sup> March 2025 on that day. The notice of appeal was served upon the respondent on 10<sup>th</sup> March 2025. On 7<sup>th</sup> March 2025, the applicant wrote to the Deputy Registrar requesting for certified typed proceedings, the judgment and the decree of the impugned decision. Thereafter, the applicant requested for a certificate of delay on 19<sup>th</sup> June 2025 that was issued on 7<sup>th</sup> August 2025.
3. The applicant prayed that the application be allowed for the following reasons: her appeal was arguable with high chances of success; no prejudice would be occasioned upon the respondent if the orders sought are granted; the delay in filing her memorandum of appeal and record of appeal was not deliberate or inordinate, was not been occasioned by inaction on her part but rather the difficulty and lengthy period of time

it took to get copies of the

typed proceeding, judgement and the Certificate of Delay; and it was meet and just that the orders sought are granted.

4. The application was opposed. In the replying affidavit of Japheth Ondiwa Rachuonyo for the respondent, sworn on 12<sup>th</sup> November 2025, the respondent urged this Court to dismiss the application for the following reason: typed proceedings were made available and collected by the applicant's advocates on 25<sup>th</sup> July 2025, a fact which is confirmed by the Certificate of Delay annexed to the application.
5. In view of the above, the respondent was of the view that no explanation had been advanced by the applicant to state why she did not file the intended appeal within the time allowed by law after receiving the typed proceedings on 25<sup>th</sup> July 2025. Further, the delay in filing the application for extension of time has also not been explained. It prayed that the application be dismissed.
6. In response to the replying affidavit, the applicant filed her supplementary affidavit sworn on 14<sup>th</sup> November 2025. She reiterated that the readiness of the record was not within the knowledge of the applicant or her advocate as alleged by the

respondent. She was emphatic that the Certificate of Delay did not

speak to whether and when her advocates were informed on the readiness of the record as the documents were only received on 19<sup>th</sup> August 2025.

7. The application was canvassed by way of written submissions. the applicant filed written submissions and a list of authorities dated 19<sup>th</sup> November 2025. She argued that she had met the threshold for the exercise of discretion by this Court. She prayed that the application be allowed. The respondent filed its written submissions and list of authorities dated 24<sup>th</sup> November 2025. It regurgitated the contents of its response to urge that the Applicant had not explained why she did not file her intended appeal within time. It submitted that the delay was not only inordinate but inexcusable. It prayed that the application be dismissed.
- 8.** I have considered the application and the affidavits on record, examined the parties' submissions and analyzed the law. Under Rule 4 of this Court's Rules, the Court may extend time for the doing of an act authorized under the Rules. The constituent elements in succeeding in an application of this nature have been well settled in our jurisdiction. This Court in

**Fahir Mohammed**

(ur) summarized the principles as follows:

***“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, (possibly) 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 the 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 factors: see Mutiso vs Mwangi, Civil Application No. Nai. 255 of 1997 (ur), Mwangi vs Kenya Airways Ltd [2003] KLR 486.”***

9. In this application, the applicant has explained that she lodged her notice of appeal dated 7<sup>th</sup> March 2025 on that day and served it upon the respondent on 10<sup>th</sup> March 2025. She also wrote to the Deputy Registrar on 7<sup>th</sup> March 2025 requesting for certified typed proceedings, the judgment and the decree of the impugned decision. Thereafter, the applicant requested for a certificate of delay on 19<sup>th</sup> June 2025 that was issued by the Deputy Registrar on 7<sup>th</sup> August 2025. It was then received by the applicant’s counsel on 19<sup>th</sup> August 2025 at the Kerugoya

offices.

10. I find that the applicant moved with speed when she expressed dissatisfaction with the impugned decision. She has also obtained the Certificate of Delay computing the period of delay in filing the application. I am therefore persuaded that the applicant has met the threshold set out in rule 4 of this Court's rules. I therefore direct the applicant to file her memorandum of appeal and record of appeal within the next 30 days from the date of this order. The costs of the application shall abide the outcome of the appeal.

**Dated and delivered at Eldoret this 27<sup>th</sup> day of November 2025.**

**M. GACHOKA C.Arb, FCIArb.**

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

*I certify that this is a  
True copy of the  
original  
Signed*

**DEPUTY REGISTRAR**