



Mwingi Mwalimu Savings & Credit Co-operative Society Limited v Kasina (Civil Application E670 of 2024) [2025] KECA 1961 (KLR) (21 November 2025) (Ruling)

Neutral citation: [2025] KECA 1961 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E670 OF 2024
DK MUSINGA, JA
NOVEMBER 21, 2025**

BETWEEN

**MWINGI MWALIMU SAVINGS & CREDIT CO-OPERATIVE SOCIETY
LIMITED APPLICANT**

AND

DAVID KASINA RESPONDENT

(Being an application for extension of time within which to lodge and serve a memorandum of appeal and record of appeal from the Judgment and Decree of the Employment and Labour Relations Court at Nairobi (Gakeri, J.) delivered on 20th February 2024 in ELRC Case No. 1442 of 2016)

RULING

1. The applicant's notice of motion dated 3rd December 2024 seeks extension of time to file and serve a memorandum and record of appeal in respect of the judgment and decree of the Gakeri J. in ELRC Case No. 1442 of 2016 delivered on 20th February 2024.
2. The applicant's affidavit is sworn by Sammy M. Mutemi, the Chief Executive Officer of the applicant, who states, inter alia, that following delivery of the said judgment, the applicant was dissatisfied with the whole of it and promptly lodged a notice of appeal on 27th February 2024; that on the same day its advocates requested for typed copies of the proceedings for purposes of filing and lodging a record of appeal; that the typed proceedings were supplied on 11th October 2024; that a certificate of delay dated 24th October 2024 was supplied by the Deputy Registrar of the court; that the certificate of delay indicates that the typed proceedings were ready for collection on 30th July 2024 but its advocates were not notified that the proceedings were ready for collection.
3. The applicant further states that by 24th October 2024 when the certificate of delay was issued, the 60 days period for lodging a memorandum of appeal and a record of appeal had already lapsed. The



applicant believes that it has an arguable appeal and has annexed a draft memorandum of appeal to its affidavit.

4. The respondent has opposed the application and filed a replying affidavit. He states, inter alia, that the applicant has not met the conditions and threshold for exercise of this Court's discretion for extension of time; that the intended appeal has no chances of success; that the certified copies of the proceedings were ready for collection on 30th July 2024 which is the relevant period for computation of time and, therefore, the 60 days period expired on or about 30th September 2024, yet the application for extension of time was filed on 30th December 2024, which he says is 156 days out of time.
5. The respondent further states that the applicant did not make any follow-up to obtain the proceedings between 30th July 2024 and 11th October 2024; that there has been inordinate delay, and if the orders sought are granted, he will be very prejudiced. He therefore urges that this application be dismissed.
6. This application came up for hearing on 28th October 2025 and in accordance with the directions given by the Court, the application was canvassed by way of written submissions only. I have considered the submissions that are on record. In an application for extension of time, the Court exercises unfettered discretion, but that discretion has to be exercised judiciously. Among the factors that the court takes into consideration are: the length of the delay, the reasons for the delay, possibly the chances of success of the intended appeal, and the degree of prejudice that the respondent may suffer if the orders sought are granted. See *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2EA 331.
7. The impugned ruling was delivered on 20th February 2024 and the notice of appeal was filed on 27th February 2024. On the same day, the applicant's advocate applied for typed proceedings, but the same were not availed until 11th October 2024. There is a certificate of delay to that effect.
8. Although the certificate of delay shows that the proceedings were ready for collection on 30th July 2024, there is no evidence that the applicant's advocate had been so notified. I will therefore compute time from 24th October 2024 when the certificate of delay was supplied. Considering that the application was filed on 3rd December 2024, the period of delay was about 51 days or thereabout, which in my view is not inordinate. The reasons for the delay have been well explained.
9. Having looked at the draft memorandum of appeal, I do not think that the intended appeal is frivolous, and regarding the prejudice that the respondent may suffer if this application is allowed, the Court must weigh the same against the applicant's desire to exercise its constitutional right of appeal. In any event, the impugned judgment was delivered only last year, although the matter has been in court since 2016. The respondent can be compensated by an award of costs.
10. All in all, I am satisfied that the applicant has advanced reasonable grounds to enable this Court exercise its discretion in its favour. Consequently, I allow this application and direct that the memorandum and record of appeal be filed and served within 14 days from the date of this ruling. The applicant shall bear the cost of the 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.

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