



**Ochiel v Kenya Revenue Authority (Civil Application E617 of 2024)
[2025] KECA 1963 (KLR) (21 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1963 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E617 OF 2024
DK MUSINGA, JA
NOVEMBER 21, 2025**

BETWEEN

JOSHUA OCHIENG OCHIEL APPLICANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

(Being an application for extension of time within which to file and serve notice of appeal and record of appeal from the decision of the Employment and Labour Relations Court at Nairobi (Maureen Onyango, J.) delivered on 30th November 2018 in ELRC No. 5 of 2012)

RULING

1. The applicant's notice of motion dated 15th November 2024 seeks extension of time to file and serve a record of appeal from the judgment of Maureen Onyango, J. rendered on 30th November 2018.
2. In his affidavit in support of the application, the applicant states that upon delivery of the said ruling, he instructed his advocate to institute an appeal; that his advocate applied for certified copies of the ruling and the proceedings for purposes of filing an appeal; that it was alleged by the court registry that the court file went missing; that thereafter he lost contact with his advocate because the applicant's mobile telephone number was changed, and that the applicant believes that his intended appeal has high chances of success.
3. The application is not opposed. That notwithstanding, I am duty bound to consider the merits of the application. In an application of this nature the Court has to consider the length of delay, the reasons for the delay, possibly the chances of success of the intended appeal, and whether the respondent will



be prejudiced if the orders sought are granted. In *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2EA 331, it was stated:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay; secondly, the reason for the delay; thirdly, (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

4. The ruling sought to be appealed from was delivered on 30th November 2018. From the annexures to the applicant’s affidavit, it appears that the first letter that was addressed to the Deputy Registrar by the applicant’s advocate requesting for certified copies of the proceedings and ruling was done on the same day of the delivery of the ruling, that is 30th November 2018. A reminder was done on 5th May 2021. There is no indication that any other reminder was sent between the period 30th November 2019 and May 2021, a period of nearly 2½ years. Several reminders were done in 2021 and 2022.
5. A certificate of delay was issued by the Deputy Registrar on 15th December 2022 which indicates that on 7th June 2022 the Deputy Registrar of the Employment and Labour Relations Court informed the applicant’s advocate that the proceedings were ready for collection upon payment of the requisite fees of Kshs. 4200. The applicant’s advocate paid that sum on 23rd August 2022 and the proceedings were collected on 24th August 2022. A certified copy of the ruling was collected on 29th November 2022. The time required for the preparation and delivery of the certified copies of the proceedings and ruling was from 30th November 2018 to 29th November 2022.
6. From 29th November 2022 when the certified copy of the impugned ruling was collected to 15th November 2024 when the application for extension of time was filed, no action was taken by the applicant and/or his advocate, and there is no explanation at all for that delay. It is not sufficient for the applicant to state that he was unable to contact his advocate because of a change of his mobile telephone number. The applicant could have found other ways of contacting his advocate, for example, by visiting the advocate’s chambers or sending an email.
7. There being no explanation for this inordinate delay, I need not consider whether the intended appeal has any chances of success, or whether the respondent will suffer any prejudice if the orders sought are granted. Suffice it to say that the applicant’s lethargy disentitles him from the exercise of this Court’s discretion in his favour.
8. Consequently, this application is dismissed. I make no orders as to costs since the respondent did not file anything in opposition to the application.

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

D. K. MUSINGA, (PRESIDENT)

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

