

**IN THE COURT OF APPEAL
AT ELDORET**

CORAM: MATIVO, JA (IN CHAMBERS)

CIVIL APPLICATION NO. NAK E054 OF

2025 BETWEEN

**SAI ELECTRICALS & HARDWARE LIMITED.....APPLICANT
AND**

**KENYA UNION OF COMMERCIAL FOOD &
ALLIED WORKERS.....RESPONDENT**

(Being an application for extension of time against the judgment of the Employment and Labour Relations of Kenya at Eldoret (M. Onyango, J.) dated 11th June, 2025

in

ELRC No.E021 of 2022).

RULING

1. Sai Electrical & Hardware Limited (the applicant) has approached this court by way of notice of motion dated 1st September 2025 seeking two substantive reliefs namely that:

- a) the court be pleased to extend time to lodge and serve notice of appeal.***
- b) the notice of appeal dated 29th July 2025, lodged on 4th August 2025 in the Superior Court and served on 4th August 2025 be validated upon the grant of extension of time and it be deemed to have been duly served.***

2. The application is premised on Rule 4 of this Court's Rules, 2022. It is supported by grounds on its body and a supporting affidavit sworn on 1st September 2025 by Simon Alega Wamukayo who is the applicant's general manager. The application is not opposed although the respondent was served with a hearing notice on 11th November 2025 through (kucfaw16@gmail.com) and was informed of the hearing date and required to file written submissions, the respondent has not complied.
3. The grounds in support of the application are that:- (a) being dissatisfied by Judgment delivered on 11th July 2025 the applicant instructed its erstwhile advocate to file a notice of appeal and request for certified proceedings in time; (b) the applicant learnt that its erstwhile advocate had not filed a notice of appeal as it had directed on 20th July 2025 ; (c) the applicant promptly instructed its current advocate who prepared a notice of appeal dated 29th July 2025 and wrote to the applicant's erstwhile advocate requesting him to file a consent letter for him to come on record; (d) the failure to file an appeal on time was not by design, since the applicant was misled by its erstwhile

advocate; (e) the intended appeal

raises arguable germane matters, namely, that the learned judge erred in holding that the respondent lacked jurisdiction to represent the grievant.

4. The applicant's counsel vide submissions dated 19th November 2025 maintained that the delay of about 49 days was not inordinate and the delay was caused by the applicant's erstwhile advocate who misled it. Therefore, an innocent party should not suffer the mistakes of its erstwhile advocate.
5. Counsel also submitted that the memorandum of appeal annexed to the instant application and marked SAW-6, demonstrates that the intended appeal raises arguable grounds and that the respondent will suffer no prejudice that cannot be atoned by an award of damages.
- 6.** I have considered the application, the affidavit in support thereto and its annexures. The only question for determination is whether the applicant has met the threshold for the exercise of the Court's discretion to grant leave for it to file and serve a notice of appeal and record of appeal out of time. The Supreme Court of Kenya pronounced itself in the question of extension of time in the

case of **Andrew Kiplagat**

Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR, and

stated as follows:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

7. Based on the cited decision, it is apparent that this application will be dispensed by determining whether the applicant has tendered sufficient reasons for not filing its notice of appeal within the stipulated time and whether the respondent will suffer any prejudice should the application be allowed.
8. In the present application, the applicant explained the reason for the delay in lodging the appeal in time to inaction on the part of his former advocate. The judgement was delivered by the Employment & Labour Relations Court on 11th July 2025. The applicant states that it instructed its erstwhile advocate to lodge a notice of appeal against the decision since it was aggrieved with the same. The said advocate took no action and instead hoodwinked the applicant into believing that a notice of appeal had been

filed. Nevertheless, the applicant learnt

that the notice of appeal had not been lodged within time on 20th July 2025. By that time, the period upon which the notice of appeal was supposed to have been filed had lapsed. The applicant instructed its current advocate who sought consent to come on record, filed a notice of appeal dated 29th July 2025 which was lodged on 4th August 2025, together with a letter dated 29th July 2025 bespeaking copies of certified typed proceeding. Subsequently, counsel filed present application on 1st September, 2025.

9. It evident from the above narration that the applicant was not indolent. Whereas blaming his erstwhile advocate for the delay filing the notice of appeal is an attractive option, it is evident that the applicant followed up with its former advocate to establish whether or not the appeal had been filed. This was 4 days after the lapse of the duration required to file a notice of appeal against the Judgment delivered on 11th July 2025. When the applicant discovered that no steps had been taken to actualize the appeal, it did not go to sleep. It promptly instructed its current advocate who promptly filed a notice of appeal dated 29th July 2025, lodged on 4th August 2025 and filed the present application.

This Court is persuaded that the

applicant has sufficiently explained the reason for the delay. The length of delay is about 37 days. This period is not inordinate and the delay is excusable.

10. In the end, I find that the applicant merits the exercise of this Court's discretion for the above stated reasons. The application is thus allowed; the annexed notice of appeal dated 29th July 2025 be and is hereby deemed as properly filed and served. The applicants are directed to file and serve a record of appeal within 30 days of this ruling. Costs shall abide the appeal.

11. Orders accordingly.

Dated and delivered at Eldoret this 27th day of November, 2025.

J. MATIVO

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

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

Signed.

DEPUTY REGISTRAR.