



**Unilever Tea Kenya Limited v Alex (Civil Application E064 of 2025)
[2025] KECA 2007 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KECA 2007 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E064 OF 2025
MS ASIKE-MAKHANDIA, JA
NOVEMBER 18, 2025**

BETWEEN

UNILEVER TEA KENYA LIMITED APPLICANT

AND

BENSON ODHIAMBO ALEX RESPONDENT

(Being an application for extension of time to file and serve a Record of Appeal out of time from the Ruling of the Employment and Labour Relations Court of Kenya at Kisumu (Baari, J.) dated 22nd July 2022 in ELRC Cause No. 105 of 2019)

RULING

1. Unilever Tea Kenya Limited, “the Applicant”, filed this application dated 25th April 2025 pursuant to the provisions of Section 3A of the *akn ke act 1977 15 Appellate Jurisdiction Act*, Rules 4, 44 and 45 of the court of appeal rules. It seeks leave of this Court to file the Record of Appeal out of time against the judgment and decree issued by the Employment Court of Kenya “the ELRC” at Kisumu on 28th July 2022 in ELRC No. 105 of 2019.
2. Benson Odhiambo Alex, “the Respondent”, has not filed any papers in opposition to the application although there is evidence of service of the application on him by this Court if a copy thereof on record, is anything to go by. So that, it is open to me to assume that what has been averred and deposed to by the applicant in the grounds and affidavit in support of the application are true and that the application is for all intents and purposes unopposed.
3. In support of the application, the applicant claims that following the delivery of Judgment and decree, it duly filed a Notice of Appeal on 11th August 2022 and, on the same date, wrote to the Deputy Registrar, ELRC bespeaking proceedings to facilitate the processing of the appeal. Despite sending multiple reminders on 6th February 2024, 28th January 2025, and 4th April 2025 respectively, they



- elicited no response at all. Meanwhile time for filing the appeal has long expired, thereby necessitating this application.
4. The application was canvassed by way of written submissions only and without appearance of counsel. The applicant duly complied with the directions of the Deputy Registrar of this Court to file the written submissions. However, and once again, the respondent failed to comply.
 5. Rule 4 of the Court of Appeal Rules gives this Court discretion to extend time for the doing of any act required by the Rules. The Court in *Said v Abdulsheikh & 2 others* [20231 KECA 257 (KLR)], stated as follows:

“...extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; that extension of time is a consideration on a case to case basis; that delay should be explained to the satisfaction of the court; whether there will be prejudice suffered by the respondents if the extension is granted; whether the application is brought without undue delay; and whether public interest should be a consideration.”
 6. In *Andrew Kiplauat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, this Court addressing the question of delay held that:

“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.”
 7. From the foregoing authorities, this Court has the power to extend time to file a record of appeal out of time. This power is however, discretionary and should be exercised judicially and not capriciously and upon good cause being shown. In the instant application, the reason for the delay has been sufficiently explained in my view.
 8. The delay in filing the appeal has been occasioned by the delayed preparation of typed proceedings, which are necessary for the processing of the record of appeal under Rule 84(1) and Rule 89 of the Court of Appeal Rules as without the proceedings, the record of appeal will be incomplete. The Court Registry failed to furnish the applicant with a copy of the typed proceedings despite the applicant on numerous occasions, constantly communicating with the Court Registry over the issue and receiving no response.
 9. It was not until the 4th April 2025, that the Court Registry staff orally informed the applicant's clerk that the proceedings had been uploaded on the Court Tracking System (“CTS”) on 23rd February, 2024. No notification was sent to the parties regarding the uploading of the proceedings contrary to the practice. Therefore, due to the delay in receiving the typed copies of the proceedings, the applicant was unable to file its Record of Appeal on or before the lapse of the statutory timelines.
 10. I am also satisfied, the respondent will not suffer undue prejudice if this Court exercises its discretion to allow the application as the applicant has deposited the decretal sum in a joint interest-earning account with Home Finance Company Limited (HFC Ltd), in the names of their respective advocates. The Applicant, on the other hand, is bound to suffer significant prejudice if the application is dismissed as it will be deprived of its constitutional right to exhaust the appellate process.
 11. In light of the foregoing and in conclusion thereof, I find that the application is merited. Accordingly, time is hereby enlarged to enable the applicant to file its record of appeal out of time. The applicant shall have twenty-one days to do so. Costs shall abide the outcome of the intended appeal.



DATED AND DELIVERED AT KISUMU THIS 18TH DAY OF NOVEMBER, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

