

**IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: W. KARANJA, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. E006 OF 2023

BETWEEN

GEOFFREY GITAU WAINOGA.....APPLICANT

AND

GOAL SOUTH SUDAN.....RESPONDENT

(Being an application for enlargement of time to file an application, out of time that seeks to strike out the Notice of Appeal dated 4th July 2019 and filed on 5th July 2019 against the judgment and decree of the Employment and Labour Relations Court Nairobi (B. Ongaya, J.) dated 21st June 2019

in

ELRC Cause No. 1033 of 2014

R U L I N G

1. The Employment and Labor Relations Court (ELRC) entered judgment in favour of the applicant herein against Goal South Sudan, (the respondent herein), in **Nairobi ELRC Cause No. 1033 of 2014**, on 21st June 2019.
2. Being aggrieved, the respondent filed a Notice of Appeal dated 4th July 2019 on 5th of July 2019 against the entire judgment and decree.
3. Contemporaneously, the respondent filed a Notice of Motion dated 31st July 2019 in which he sought orders of stay of execution of

the whole judgment pending the hearing of the application and the intended appeal.

4. Thereafter, the parties compromised the said application on 6th November 2019, whereby a stay of execution pending appeal was granted on condition that the appellant deposits the decretal sum in a joint interest earning account of the two firms of advocates namely **Kinoti & Kibe Company Advocates** and **Ajarwalla & Khana LLP**.
5. Thereafter, both parties appear to have slipped into slumber and no further action was taken in the matter and the intended appeal was not processed, nor was there any application to set aside the stay of execution orders. This Court was also not moved for striking out the Notice of Appeal within the timelines prescribed by the **Court of Appeal Rules**.
6. Six years later the applicant has moved this Court with the present application seeking extension of time to file an application to strike out the Notice of Appeal. The said Notice of Motion which is dated 25th July 2025 implores the Court to grant leave to the applicant for him to file an application for striking out the Notice of Appeal dated 6th July 2019. The application is predicated on the

grounds on its face and supported by the affidavit of **Geoffrey Gitau Wainoga** sworn on 25th July 2025.

7. The gist of the reasons given for the delay are on the face of the application and also in the depositions in the supporting affidavit. According to the applicant, the respondent in this application failed to file the record of appeal within the 60 days prescribed under the **Court of Appeal Rules** hence this application. However, under **Rule 86**, an application to strike out the Notice of Appeal ought to be filed within 60 days of the date the Notice of Appeal was lodged.
8. According to the applicant, he filed the application to strike out the Notice of Appeal dated 2nd of December 2022 but as the same was outside the 60 days provided for under the **Court of Appeal Rules**, the applicant did not succeed as he was directed or advised by the Court to withdraw it or to put it on hold as he sought leave to file it out of time hence the application now before me.
9. According to the applicant he believed that the respondent was pursuing the typed proceedings with the court registry to enable him file the record of appeal only to realize too late that the respondent appeared not interested in pursuing the appeal and hence the application to strike out the Notice of Appeal.

10. The application is opposed through the grounds of opposition dated 14th November 2025 by counsel on record for the respondent. According to counsel, the application before the court is fatally defective for failure to comply with **Rule 17** of the **Court of Appeal Rules**, which mandates service of applications upon parties. According to counsel, the present application was not served on them.
11. Further, the application is said to be incurably defective as the applicant is seeking to challenge or appeal the ruling delivered on 21st of July 2021 without filing a Notice of Appeal or applying for leave to appeal out of time. According to counsel, the application is irredeemably defective as the prayer under **Rule 4** can only apply where the application has not been filed and it cannot be invoked after the fact. That is, nonetheless, not the correct interpretation of that **Rule** and the application before me is compliant with **Rule 4** of the **Court of Appeal Rules** which provides as follows:

“The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.” [emphasis added]

I will, therefore, proceed to determine the same on merit.

12. It has been urged that the applicant has not offered any sufficient or reasonable explanation for the prolonged inaction in filing this application or the application to strike out the Notice of Appeal. The delay is said to be inordinate, inexcusable, and it disentitles the applicant from the discretionary relief sought. Counsel goes on to state that the applicant will not suffer any prejudice if the application is not allowed as the money deposited in the joint account continues to earn interest, and that allowing this application as it is will be an abuse of the process of the court. Counsel maintained that no explanation whatsoever has been given for the inordinate delay and the Court was urged to dismiss the application.
13. Both parties filed submissions in support of their rival positions and each party urged the Court to rule in its favour.
14. I have considered the application before me along with the grounds of opposition, the rival submissions and the relevant law.
- 15.** The power to extend time under **Rule 4** of this Court's **Rules** is an exercise of discretion and the factors to be considered were stated in **Fakir Mohammed -vs- Joseph Mugambi & 2 others [2005]**

eKLR (Civil Application No. Nai. 332 of 2004) where the
Court held that;

“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, (possible) 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 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 factor.”

See also **Mwangi -vs- Kenya Airways Ltd (2003) KRL 486.**

16. It is against the above parameters that this application has to be considered. Was the delay involved inordinate? The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.
17. On the issue of delay, I note that the impugned judgment was delivered in June 2019. The Notice of Appeal was filed timeously and there was no complaint that the same was not served on time. Parties even thereafter compromised the application for stay of execution and the decretal amount was deposited in a joint account as agreed by the parties. The applicant did not move the Court for striking out the appeal

within 60 days after service of

the Notice of Appeal. The application was filed 6 years later.

This period is in my view inordinate, by any standards.

18.

19. It behooved the applicant to proffer a plausible explanation for the delay. The only explanation given by the applicant is that he presumed that the appellant was pursuing the proceedings and he presumed there was delay on account of backlog in typing the proceedings. I am not persuaded that it takes 5 years to type proceedings before the ELRC Registry. Did the applicant ever inquire from the respondent after a reasonable time the reason why the record had not been served on him. Why was the application for striking out the Notice of Appeal not filed sooner, or better still, an application to deem the Notice of Appeal as withdrawn, after expiry of some reasonable time and the latter application was not inhibited by the 60 days?

20. My conclusion is that no sufficient explanation has been tendered to allow me exercise my discretion in favour of the applicant. Having so found, I do not need to consider any of the other parameters.

21. Ultimately, my conclusion is that this application falls far below

the threshold needed for an application of this nature to succeed.

Accordingly, I find the Notice of Motion before me devoid of merit and dismiss it with costs to the respondent.

Dated and delivered at Nairobi this 28th day of November 2025.

W. KARANJA

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

