



Wairioko v Mwalimun National Savings and Credit Cooperative Society Limited (Civil Application E336 of 2025) [2025] KECA 1971 (KLR) (21 November 2025) (Ruling)

Neutral citation: [2025] KECA 1971 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E336 OF 2025
P NYAMWEYA, JA
NOVEMBER 21, 2025**

BETWEEN

RHODA GACHAMBI WAIRIOKO APPLICANT

AND

**MWALIMUN NATIONAL SAVINGS AND CREDIT COOPERATIVE SOCIETY
LIMITED RESPONDENT**

(An application for extension of time to file and serve a notice of appeal and letter bespeaking of proceedings with respect to the judgment delivered by the Employment and Labour Relations Court at Mombasa (M. Onyango J.) on 25th April 2024 in ELRC Cause No. E940 of 2021)

RULING

1. The applicant's claim in the Employment and Labour Relations Court seeking orders that her suspension from duty without pay was unlawful was dismissed in a judgment delivered by M. Onyango J. on 25th April 2024 in ELRC Cause No. E940 of 2021. The applicant is desirous of appealing the said judgment, and has filed an application in this Court by way of a Notice of Motion dated 27th March 2025, seeking orders for extension of time within which to file and serve the notice of appeal against the said judgment, and that the Notice of Appeal dated 30th April 2024 and letter requesting for proceedings dated 4th May 2024, both filed and served on 4th June 2024, be deemed to be duly filed served and properly on record.
2. The main ground for the application is that the delay in filing the notice of appeal was occasioned by a delay in procuring the typed judgment of the ELRC (hereinafter "the trial Court"). The applicant detailed the events that took place in the trial Court before and after delivery of the impugned judgment. According to the applicant, the trial Court had issued directions on 22nd April 2022 that judgment would be delivered on notice, and on 25th April 2024, the applicant's advocates received a call from the trial Judge's office in Eldoret informing them that the judgment would be delivered virtually



by the Judge at 11.00 am. After delivery of the judgment, as scheduled, the applicant's advocates were informed to wait for the physical file to be brought to the Nairobi Registry from the Eldoret Registry, before they could be availed a copy of the same. Despite the applicant's advocates writing to the Eldoret Registry on 8th May 2024 seeking to be allowed access to a copy of the said judgment, they were only able to access the judgment on 17th May 2024 after regularly checking with the Nairobi Registry to confirm whether it had received the physical file.

3. Accordingly, that the delay in accessing the judgment led to the applicant filing her notice of appeal and letter requesting for proceedings out of time on 4th June 2024 after the 14 days' window for lodging an appeal had lapsed, and the applicant averred that the delay in filing the Notice of Appeal and request for proceedings was not inordinate. On the delay in filing the application, the applicant explained that there was a similar application pending determination before the ELRC Court. Lastly, the applicant averred that she has an arguable appeal against the said judgment as demonstrated in the draft Memorandum of Appeal she had exhibited in her supporting affidavit of even date.
4. The applicant's advocates filed written submissions dated 22nd August 2025 in which the above averments were reiterated and various decisions of this Court cited, including *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi* (1999) 2 EA 231, *Muringa Company Ltd vs Archdiocese of Nairobi Registered Trustees*, Civil Application No. 190 of 2019 and *Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet* (2018) eKLR, on the criteria that guides the exercise of the discretion to extend time under Rule 4 of the Court of Appeal Rules. Also cited was the decision in *Sokoro Savings and Credit Cooperative Society Ltd vs Mwamburi* (2023) KECA 381 (KLR) for the submission that the applicant moved the court timely and had a plausible explanation for the delay, which was the delay in getting the typed judgment from the trial court.
5. The respondent opposed the application in a replying affidavit sworn on 23rd September 2025 by Petronila Omollo, its Human Resources Manager, who deponed that no logical explanation had been given by the applicant for the delay in filing the notice of appeal. According to the respondent, the availability of a judgment is not a prerequisite to filing a notice of appeal, and it therefore could have been filed immediately after the pronouncement by the trial Court, and the applicant had therefore not acted with due diligence. Further, that the applicant's assertions as regards the efforts she made to obtain a copy of the judgment were not supported by any documentation, and extension of time would cause prejudice and hardship to the respondent of being subjected to continued uncertainty and not being allowed to enjoy the fruits of its judgment.
6. This response was reiterated in submissions filed by the respondent's advocates dated 3rd October 2025, and the decision of this Court in *Raphael Musila Mutiso & 3 Others vs Joseph Nduva Nthuka & Another* (2019) eKLR and of the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 Others* (2014) eKLR were cited to urge that extension of time is not the right of a party and is an equitable remedy that is only available to a deserving party at the discretion of the court. Therefore, that a party who seeks extension of time has the burden of laying a basis to the satisfaction of the court for the grant of such orders, and the applicant had not provided any plausible explanation for the delay in filing the notice of appeal, since a typed judgment is not a prerequisite for filing a notice of appeal, and the applicant was not diligent.
7. I heard the application in chambers in the absence of the parties on 13th October 2025, and have considered the arguments put forth by the applicant and respondent. The principles that apply to an application for extension of time under Rule 4 of the Court of Appeal Rules of 2022 have been the subject of many decisions of this Court and the Supreme Court of Kenya. In summary, this Court confirmed in the case of *Leo Sila Mutiso vs Rose Hellen Wangare Mwangi*, (supra) that the decision



whether or not to extend time for appealing is essentially discretionary, taking into account the length of delay and reason for the delay.

8. In the case of *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 Others* (supra), the Supreme Court set down the underlying principles that a Court should consider in exercising its discretion as being:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
- ii. A party who seeks an extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- v. Whether the respondents will suffer any prejudice if the extension is granted;
- vi. Whether the application has been brought without undue delay; and
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time."

9. The Supreme Court also pronounced as follows in the case of *Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet* (supra):

"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."

10. I note that the applicant filed its Notice of Appeal and letter requesting for proceedings on 4th June 2024, which entailed a delay of twenty-five

(25) days outside the 14 days' prescribed by Rule 77(2) of the Court of Appeal Rules of 2022, which time started to run with delivery of the judgment by the trial Court on 25th April 2024, and lapsed on 9th May 2024. The explanation for the delay was that the applicant was not able to access the typed judgment in time from the trial Court, which explanation is disputed by the respondent. It is my view that while accessing the subject judgment may have been necessary to enable the applicant make an informed decision whether to appeal or not, the applicant however did not provide any evidence of the efforts she made in this regard between the date of delivery of the judgment on 25th April 2024 and date of filing of notice of appeal and letter requesting for proceedings out of time on 4th June 2024. In particular, no requests to the trial Court's registries were exhibited to support the applicant's averments and lay a basis for the exercise of this Court's discretion in her favour.

11. In addition, the instant application for extension of time was filed on 27th March 2025, almost one year after the delivery of the impugned judgment. The explanation for this delay by the applicant was that she filed an application dated 2nd July 2024 in the trial Court seeking extension of time to file the notice of appeal out of time, and a ruling was delivered thereon on 14th March 2025 in which the trial Court held it had no jurisdiction to do so. The applicant submitted that the instant application dated



27th March 2025 was thereafter filed on 20th May 2025, which was after a period of sixty-six (66) days subsequent to the delivery of the said ruling. No explanation was proffered by the applicant for the delay of sixty-six (66) days in filing the instant application.

12. I am accordingly not persuaded that sufficient cause for the delay in filing the notice of appeal and the application for extension of time has been demonstrated by the applicant, and I find that the delay was inordinate. Consequently, the application dated 27th March 2025 is not to merited, and is hereby dismissed with no order as to costs.

13. Orders accordingly.

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

P. NYAMWEYA.

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JUDGE OF APPEAL

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

Signed Deputy Registrar.

