

**IN THE COURT OF
APPEAL AT KISUMU
(CORAM: KIMARU, JA (IN CHAMBERS))**

CIVIL APPLICATION NO. E054 OF 2025

BETWEEN

**PETER OTIENO ODERA.....1ST APPLICANT
REGINAL OWAKA OCHOLA.....2ND
APPLICANT ANTONEY GAYA TINDI & 116
OTHERS.....3RD APPLICANT**

AND

**HOMA BAY COUNTY GOVERNMENT.....1ST RESPONDENT
HOMA BAY COUNTY SERVICE BOARD.....2ND
RESPONDENT
CECM FINANCE, HOMA BAY COUNTY.....3RD RESPONDENT**

(Being an application for extension of time to appeal out of time from the Ruling of the Employment and Labour Relations Court of Kenya at Kisumu (DR. J. Gakeri, J) dated 4th December, 2024

in

ELRC No. E032 of 2024)

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RULING

1. The applicants moved this Court by notice of motion under **Rule 4** of the **Court of Appeal Rules** seeking to be granted leave to appeal out of time. The applicants explain the reason for delay in lodging the appeal in time to be: There were ongoing negotiations between the applicants and the

respondents which they were hopeful would result in an out of court settlement;

unfortunately, the expected agreement did not materialize. The applicant further state that they filed an application for review of the impugned Ruling before the Employment and Labour Relations Court (ELRC) hence the delay in lodging the appeal in time. The applicants urge the Court to find that the reasons that they have given for delay in lodging the appeal in time sufficient to enable the Court exercise its discretion in their favour. In addition, the applicants contend that they have a good appeal with high chances of success. The respondents would not be prejudiced by the grant of the order craved for. It would further be in the interest of justice for the application to be allowed in the circumstances. The application is supported by other grounds in the face of the motion and the annexed affidavit of **Peter Otieno Odera**, one of the applicants.

2. The application is opposed. The respondents filed grounds in opposition to the application. They state that the reasons given for the delay in lodging the appeal in time were not tenable and were not credible. The respondents were of the view that the delay was inordinate. No draft memorandum of appeal had been annexed to the application to support the

applicants' assertion

that they have a good appeal with any chances of success. The respondents asserted that the applicants had filed numerous suits in the Superior court seeking more or less similar orders that they intend to crave on appeal. That, in their view, amounted to abuse of judicial process. In the premises therefore, the respondents urged the Court to dismiss the application.

3. Both the applicants' and the respondents' respective counsel filed written submissions in support of their respective opposing positions. Both parties appreciate that what is being sought by the applicants in this application is an exercise of judicial discretion. Under **Rule 4** of the **Court of Appeal Rules**, this Court has unfettered discretion to extend time for any steps to be taken outside the period specified by the Rules. The exercise of the judicial discretion is, however, circumscribed by principles which assists the Court which were laid down in various decisions of this Court. For instances, in **Fakir Mohammed v. Joseph Mugambi & 2 others [2005] eKLR**, the Court held thus:

“...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 reasons 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 relevant but not exhaustive factor.”

4. In the present application, the subject matter of the dispute between the applicants and the respondents is the enforcement of a Judgment that was entered in favour of the applicants. It is apparent that the enforcement process has been protracted and, over time, has taken judicial twists and turns. What is without doubt is that the applicant's pursuit of justice is unrelenting even with the obvious legal hurdles that they have striven to overcome. This Court has considered the reasons given by the applicants for the delay in lodging the appeal in time. The reasons are excusable. The period of delay is not inordinate.

5. Once the applicants were thwarted in their effort to review the decision of the ELRC, they immediately filed the present application before this Court. There was no undue delay. Although the respondents are of the view that the delay is

such

that the applicants are undeserving of the exercise of this Court's discretion, this Court is of the opinion that the applicants should not be locked out of the seat of justice in the circumstances of this application. They should be allowed to ventilate their appeal before this Court.

6. In the premises therefore, the application has merit and is allowed. The applicants are granted leave to lodge the appeal out of time. The notice of appeal shall be filed and served within **seven (7) days** of today's date. The record of appeal shall be filed within **fort five (45) days** of today's date. The respondents shall have the costs of the application in any event.

Dated and delivered at Kisumu this 18th day of November, 2025.

L. KIMARU

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**JUDGE OF
APPEAL**

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

Signed

DEPUTY REGISTRAR.