



**Aliera v Century Microfinance Bank (Appeal E039 of 2025)
[2025] KEELRC 3560 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3560 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E039 OF 2025
JW KELI, J
DECEMBER 10, 2025**

BETWEEN

CALISTUS SELEBWA ALIERA APPELLANT

AND

CENTURY MICROFINANCE BANK RESPONDENT

RULING

1. The applicant/respondent, following the appeal by the appellant, filed an application by way of Notice of Motion dated 11th June 2025 seeking for the following orders-
 - a. That this Honourable Court be pleased to enlarge time and grant leave to the Respondent to file the cross-appeal out of time as against the Judgment of the Honourable Court delivered on 31st January 2025 in MCELRC Number E712 of 2021.
 - b. That the herewith annexed Cross Appeal dated 19th March 2025 be deemed by this Honourable Court as properly filed and properly before the Court's record.
 - c. That costs of this application be provided for.

Grounds of the application

2. That the Appellant lodged an Appeal herein through a memorandum of appeal dated 11/02/2025. THAT there was delay in giving instructions on the suit following the Respondents restructure. That by the time the Advocate for the Respondent could obtain sufficient instructions, the time for filing the cross appeal had run out. That the cross-appeal is arguable and has overwhelming chances of success. That the Appellant is unlikely to suffer any prejudice since directions on the Appeal are yet to be taken. That the Appellant is yet to file the Record of Appeal. That the delay occasioned herein is not so inordinate or so great as to be inexcusable. That it is in the interest of justice that this Application be allowed.



3. The application was supported by the affidavit of Odhiambo E. Ouma Advocate sworn on 11th day of June 2025. The deponent annexed a draft memorandum of the cross appeal.

Response

4. The application was opposed by the appellant through grounds of opposition dated 25th August 2025 as follows-
5. That the said Application as filed is incompetent misconceived and abuse of the process of this Honourable Court which ought to award costs to the Applicant.
6. That service of the pleadings herein was made pursuant to Order 5 Rule 22B of the Civil Procedure (Amendment) Rules, 2020 which allows service of documents via email, Section 1(B)(1)(e) of the Civil Procedure Rules, 2010 and the Practice Directions on electronic case management issued by The Hon. Chief Justice on 4th March 2020, and also published in Kenya Gazette Notice No. 2357 thus constituted proper service in Law and in Line with Rule 13 of the Employment and Labour Relations Court, 2024.
7. That the Respondent's application dated 11th June 2025 seeks discretionary orders to enlarge time and file a cross-appeal out of time, which discretion may be exercised by the Court in appropriate circumstances.
8. That while the Appellant does not object to the Respondent's prayer for enlargement of time and leave to file the cross-appeal, the Appellant notes there has been unnecessary delay in filing the cross-Appeal.
9. That the explanation offered for the delay, being internal restructuring and lack of timely instructions, which matter is squarely within the Respondent's realm; is not sufficient to absolve the Respondent from liability as to costs of the application.
10. That the Respondent has not denied the fact that the application has been brought more than four months after delivery of judgment and over two months after the Appellant lodged its memorandum of appeal, without adequate justification for the prolonged delay.
11. That the Respondent should therefore bear the costs of the application occasioned by its own delay . In the premises, it is just and equitable that the costs of the application be awarded to the Appellant.
12. That without prejudice to the foregoing, the Claimant is willing to concede to the instant application upon payment of thrown away costs of KSHS. 10,000.00, the Respondent to file all documents within Three (3) Days in compliance to the strict timelines of this Court.

Issue – whether the application is merited

SUBDIVISION -APPELLANT SUBMISIONS

PARA 13.

Whether there is reasonable cause for the delay - Rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides as follows in regard to filing of a Cross Appeal. 'Cross appeals (1) The respondent may file and serve a cross appeal by way of a cross memorandum of appeal in Form 1 as set put in fee First Schedule with the necessary modifications, setting out the grounds of the cross appeal. (2)A cross appeal shall be filed and served within twenty-one days from the date of service of the memorandum of appeal.' In *Protective Custody Limited v Omukuba* [2022] KEELRC 3931 (KLR) the Court adopted the Supreme Courts decision in *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & Others* and *Aviation Cargo Support Limited v St. Mark Freight Services Limited* [2014] eKLR



concluded thus; By the decisions of the court in the foregoing precedents, it is not enough for an Applicant to just express his intention to file an appeal out of time, he/she bears the obligation to demonstrate that the delay in filing his appeal is not inordinate or give reasons for the delay. The Appellant herein being aggrieved by the judgment in the primary suit lodged an Appeal through a Memorandum of Appeal dated 11/02/2025. The directions in the Appeal herein are yet to be given since the proceedings are not ready yet. In *Rono v Amritlal S Shah Wholesalers Limited* [2024] KEELRC 2508 (KLR) the Court observed; Also, from a perusal of the record, it is worth noting that the Respondent's appeal has not been set down for hearing. The cross-appeal may be canvassed together with the appeal and thus no prejudice will be suffered by the Respondent. The Applicant has deponed that the Respondent underwent a restructure following the Acquisition of the Respondent's by Branch Microfinance Ltd, and by the time Advocate for the Respondent could obtain sufficient instructions, the time for filing the Cross Appeal had run out. We submit that the delay was not intended to prejudice the Appellant in any way as the same was unforeseeable. Further, the delay is not so inordinate as to be inexcusable, and we therefore pray that the Court in exercising its discretion and in the furtherance of Article 159 (2)(d) of *the Constitution* of Kenya grant leave to the Respondent to file the Cross Appeal out of time. We also submit that the Respondent has not demonstrated the prejudice that he is likely to suffer if the time is extended. The Appeal is still at its formative stages and directions are yet to be given. b) Whether the Cross Appeal presents arguable grounds with reasonable chances of success. We submit that the Cross Appeal raises arguable and substantial grounds with a reasonable chance of success. The Respondent in its Cross Memorandum of Appeal annexed to the Application and marked as OE01 appeals against the award of accrued leave pay beyond the statutory limit of three (3) years made by the learned magistrate. It is the Respondent's/Applicant's submission that Section 89 of the *Employment Act* limits claims to three (3) years within the act complained of. In the primary suit there was sufficient evidence to show that the Appellant had taken leave and therefore the entire claim should have been disallowed. Equally, the Respondent having successfully challenged the entire claim by the Appellant except for leave pay, costs should not have been awarded and each party should have borne their own costs. We submit that it is enough that an Applicant shows that there is at least one issue upon which the Court should pronounce its decision as was determined by the Court of Appeal in the case of *Kenya Power & Lighting Company Ltd v Eunice Nkirote Ringera* [2020] KECA 54 (KLR) "In determining whether the appeal is arguable or not, it is trite that by arguable it does not mean the appeal must be one that ought to succeed but rather one that raises a serious question of law or a reasonable argument deserving consideration by the Court." We urge the Honourable Court to note that the Appellant has not contested or submitted that the Cross Appeal is frivolous. We invite the court to find that there are triable issues raised in the Cross Memorandum of Appeal.

The Respondent Submissions

14. Whether the Applicants have satisfied the principles for enlargement of time - the principles governing the grant of enlargement of time are now well settled. The foremost order being sought is for leave to appeal out of time, or the enlargement of time for filing a cross-appeal. The power of the court to enlarge time for filing an appeal out of time is expressly stipulated under Section 95 of the CPA as read with Order 50, Rule 6 of the CPR and Rule 18 of the Employment and Labour Relations Court (Procedure) Rules, 2024. The foregoing provisions state that the power of this Honourable Court to enlarge time for filing an appeal or cross-appeal out of time is discretionary and must be exercised judiciously and only where sufficient cause has been shown. That additionally a successful applicant must demonstrate "good and sufficient cause" for not filing the appeal in time. The Honourable court in *Ndambuki & another v E-Gap Solutions Limited* [2025] KEHC 3855 (KLR) in citation of the case *Thuita Mwangi v Kenya Airways* [2003] eKLR, the Court of Appeal while considering Rule 4 of the Court of Appeal Rules which was in pari materia with Section 79G of the CPA, reiterated its decision in *Mutiso v Mwangi* [1997] KLR 630 as follows: "It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that general the



matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.” That while the discretion of the Court is unfettered, a successful applicant is obligated to adduce material upon which the court can exercise its discretion in his or her favor as was established in the Supreme Court in the case of *Nicholas Kiptoo Korir Arap Salat v IEBC and 7 Others* [2014] eKLR which enunciated the principles applicable in an application for leave to appeal out of time. The Court stated inter alia that: “(T)he underlying principles a court should consider in exercise of such discretion include; i. Extension of time is not a right of any 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 for 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 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 there will be any prejudice suffered by the Respondent if the extension is granted; vi. Whether the application has been brought without undue delay.....” That these principles were similarly elaborated in *Muchemi v Roy Transmotors Limited* [2025] KEELRC 650 (KLR) in which the Honourable court stated that the Employment and Labour Relations Court reaffirmed that the power to extend time under Rule 18 of the ELRC (Procedure) Rules 2024 is discretionary and may only be exercised where circumstances justify as follows; “It is mandatory that an appeal can only be filed within thirty days. Rule 18 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides that: ‘The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal.’” 7. On cross appeals, the Environment and Land Court in *Mahugu v Kipchumba & 37 others; Kipkosgei (Cross Appellant)* [2024] KEELC 6300 (KLR) held: “Although there is no fixed timeline for the filing of cross-appeals, it is incumbent that they be filed within a reasonable period. If the applicant was desirous of filing a cross-appeal, he should have done so within reasonable time after being served with the memorandum of appeal. Where a party falls outside the prescribed timelines, they must promptly seek leave to file the cross-appeal out of time.” That from the foregoing authorities and facts of this case, it is evident that the Respondent/Applicant has failed to demonstrate any sufficient cause to warrant the court’s discretion in enlarging time. The explanation offered is that the Respondent/Applicant’s internal restructuring caused delay in issuing instructions which is an internal administrative lapse wholly within the Respondent/Applicant’s control. The courts in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR and *Mahugu v Kipchumba & 37 Others; Kipkosgei (Cross Appellant)* [2024] KEELC 6300 (KLR) were categorical that such explanations cannot amount to good cause as contemplated in law. To allow this application would be to permit litigants to disregard statutory timelines and later invoke administrative inefficiency as a shield, the Appellant/Respondent submits that the Respondent/Applicant has not only slept on their rights but also failed to act with diligence despite having been served with the Appellant’s Memorandum of Appeal and Notice of Address of Service as early as February 2025. The delay of five months, without any cogent evidence of circumstances beyond their control, amounts to indolence. Judicial discretion, being equitable in nature, does not avail a party who approaches the court with unclean hands. This Honourable Court is therefore urged to find that the Respondent’s motion is devoid of merit, and that the delay is inordinate, unjustified, and incapable of being cured by equity or discretion. Nevertheless, and in the interest of justice, the Appellant/ Respondent is not opposed to the enlargement of time sought by the Respondent/Applicant. However, given that the delay was within the Respondent/Applicants’ control and no good cause has been demonstrated, the Respondents humbly prays that should this Honourable Court be inclined to allow the application, it does so with costs to the Appellant/Respondent.



Decision

15. Rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides as follows in regard to filing of a Cross Appeal-¹⁷. Cross appeals (1) The respondent may file and serve a cross appeal by way of a cross memorandum of appeal in Form 1 as set out in the First Schedule with the necessary modifications, setting out the grounds of the cross appeal. (2) A cross appeal shall be filed and served within twenty-one days from the date of service of the memorandum of appeal.⁷ In *Protective Custody Limited v Omukuba* [2022] KEELRC 3931 (KLR) the Court adopted the Supreme Court's decision in *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & Others and Aviation Cargo Support Limited v St. Mark Freight Services Limited* [2014] eKLR concluded thus; By the decisions of the court in the foregoing precedents, it is not enough for an Applicant to just express his intention to file an appeal out of time, he/she bears the obligation to demonstrate that the delay in filing his appeal is not inordinate or give reasons for the delay. The reason given for the delay to file the cross-appeal was internal restructuring hence delay in issuance of directions. The reason is hollow in the mind of the court. The court is mindful to sustain the appeal as held in *Butt -vs Rent Restriction Tribunal* (1982) KLR 417 where the Court of Appeal (Madan J.A) gave guidance on how a Court should exercise discretion in an application for a stay of execution, that: -

“ If there is no other overwhelming hindrance, a stay ought to be granted so that an appeal, if successful, may not be nugatory. A stay which would otherwise be granted ought not to be refused because the judge considers that another, which in his opinion will be a better remedy, will become available to the applicant at the conclusion of the proceedings.

It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church* (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458: “I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.” (emphasis given) The court finds no prejudice would be suffered by the appellant as the appeal is yet to be set down for hearing and it appears the appellant is only keen on costs. The court therefore exercises its discretion and extends time for filing of the cross-appeal. Any prejudice suffered by the appellant is addressed by costs which are awarded to the appellant. The cross-appeal be filed within 30 days of this order. Mention on 9th February 2026 to confirm whether the appellant has filed a record of appeal.

16. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10TH DAY OF DECEMBER, 2025.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Ms Alwang'a h/b Odhiambo

Respondent- absent

