



**Justus v Tombe Tea Factory Limited (Miscellaneous Application
E010 of 2025) [2025] KEELRC 3518 (KLR) (8 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3518 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII
MISCELLANEOUS APPLICATION E010 OF 2025
NZIOKI WA MAKAU, J
DECEMBER 8, 2025**

BETWEEN

GEORGE MORARA NYAMENO JUSTUS APPLICANT

AND

TOMBE TEA FACTORY LIMITED RESPONDENT

RULING

1. The Application before me is the notice of motion application dated 11th June 2025. The motion seeks extension of time to file an appeal against the decision of the Learned Magistrate made on 6th February 2024 in Senior Principal Magistrate’s Court MCELRC No. 30 of 2019. The Applicant asserts that the dismissal of his suit was erroneous and thus ought to be impugned.
2. The application was to be disposed of by way of written submissions. No submissions were placed on the file despite the directions of the Court on 15th October 2025. Parties had confirmed to the Deputy Registrar that they had filed submissions but none was availed in terms of Rule 24 of the Employment and Labour Relations Court (Procedure) Rules, 2024. The Court therefore makes the determination without benefit of sight of the submissions said to have been filed.

Disposition

3. The matter of leave to file an appeal out of time is discretionary. For one to succeed, he must provide a satisfactory and reasonable explanation for the delay. Secondly, one must demonstrate that the application has been brought without undue delay. Thirdly, it should be demonstrated that no prejudice will be occasioned to the opposite party. The fourth consideration is that the delay must have been for a good and sufficient cause and not merely frivolous.
4. The affidavit in support asserts mistake of counsel. The Applicant states in paragraph 4 thereof that the delay in filing the appeal was not intentional but was due to the mistake of his counsel who was not



keen on pursuing the appeal within the prescribed timelines. He also blames counsel for not informing him of the correct position. He asserted the delay of 16 months was excusable as it was occasioned by factors beyond his control.

5. The general rule is that mistakes of counsel should not be visited on their client. However, in this case, it has not been demonstrated by way of affidavit or otherwise that the Applicant made any effort to ascertain the position on his appeal. He did not attend the Registry to enquire or attempt even to interface with the Court Tracking System which is where the judgment he was allegedly seeking to appeal is lodged. He has even attached a copy which suggests knowledge if not at least awareness of the existence of the CTS system.
6. The Applicant had a long period of inactivity – 16 months – when he did nothing. A period of over one year is inordinately long for one to assert there is no laches on their part. He was indolent and has failed to convince the Court there was timely action on his part. In my considered view no grounds in terms of the *Employment and Labour Relations Court Act* or the Procedure Rules of the Court exist for the exercise of my discretion in favour of the Applicant. He fails to surmount the basic tenets to trigger the exercise of discretion and therefore the application for leave is denied. There will be no order as to costs.

Orders accordingly.

DATED AND DELIVERED AT KISII THIS 8TH DAY OF DECEMBER 2025

NZIOKI WA MAKAU, MCIArb.

JUDGE

