

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

ELRC APPEAL NO. 312 OF 2025

SIMION SHIJENJE LITALI.....

APPELLANT/APPLICANT

-VERSUS-

SEKURA INTERNATIONAL LIMITED

RESPONDENT

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1. The applicant being out of time in filing of appeal against judgment of Hon T.M Orlando, PM, dated 20th June 2024 filed application dated 11th September 2025 brought under Rule 18 of the Employment and Labour Relations Court Rues and the provisions of Sections 1A,1B and 3A of the Civil Procedure Act seeking for the following reliefs-

- A. **An order does issue extending time within which the Appellant may file the Memorandum of Appeal herein.**

B. An order be and is hereby made that the Memorandum of Appeal filed on 10th September 2025 be deemed to have been properly filed within time.

C. Costs of this application be provided for.

D. This Honourable Court be pleased to grant such further or other relief as it may deem just.

2. Grounds of the application

- i. THAT the Applicant being dissatisfied with the judgement and decree intends to Appeal against the whole judgement rendered by Hon. TOM MARK ORLANDO (PM) 20/6/2025.
- ii. THAT the time allowed to file an appeal has run out and this application has been filed without undue delay.
- iii. THAT the intended appeal raises arguable issues with high chances of success.
- iv. THAT the Applicant undertakes to prosecute the appeal expeditiously within such time as this Honourable Court may order upon requisite leave being granted.
- v. THAT the Respondent is unlikely to suffer any prejudice
- vi. Whether the application for leave to file appeal out of time was merited.

3. The application was supported by the affidavit of the applicant sworn on the 11th September 2025 where he annexed a copy pf the impugned judgment, copy of his draft memorandum of appeal , a copy of a picture indicating the office of the advocate was involuntary closed for rent distress within the time of filing the appeal and a copy of a

letter requesting for typed proceedings. The applicant, vide his advocate Onenga Clement Omongo, filed a further supplementary affidavit sworn on the 12th October 2025 in response to the replying affidavit of the respondent.

4. The application was opposed by the respondent sworn by Sophia Muriithi on the 8th October 2025 as follows-
5. THAT the allegations made by the Applicant's advocate, Mr. Onenga Clement Omongo, that his office was shut down by his landlord are merely a ploy intended to mislead this Honourable Court and to unjustifiably elongate proceedings which were concluded over three (3) months ago.
6. THAT the image attached by the Applicant as proof of office closure is insufficient and unreliable evidence as the closure notice bears no date and could therefore have been closure at any unknown date, which raises serious doubts as to the veracity of the said allegation.
7. THAT Mr. Onenga further states that the alleged office closure was sudden and unexpected, yet he ought to have reasonably known of his law firm's rent arrears and taken appropriate measures to prepare for such an occurrence, hence the excuse is neither credible nor reasonable.

8. THAT without prejudice to the foregoing, even if this Honourable Court were to indulge the Applicant's insufficiently evidenced claim of office closure, it is worth noting that on 1 st July, 2025, as evidenced on the Court Tracking System (CTS), OCO Law filed a Consent on Change of Advocates. (See Annexure SM1 – a copy of a screen capture of the CTS platform)
9. THAT on the same 1st July, 2025, the said Mr. Onenga served upon my advocates via their email address, the said filed Consent on Change of Advocates but curiously made no mention whatsoever of any intention to file a Memorandum of Appeal in that email. (See Annexure SM2 – a copy of email correspondence between the Applicants and Respondent's advocates)
10. THAT if indeed the Applicant's advocates are acting in good faith as they allege, the email sent on 1st July should have been accompanied with service of their Memorandum of Appeal which was allegedly ready for filing on that date.
11. THAT I am advised by my advocates on record, which advice I believe to be true, that the only communication received from the Applicant's advocates after delivery of judgment was in relation to the said Notice of Change of Advocates, and at no point thereafter did they attempt to contact my advocates to inform them of an intended appeal or any alleged disruption to their office operations.

12. THAT Mr. Onenga claims in his sworn affidavit that the Memorandum of Appeal was ready for filing on 1st July, 2025, yet fails to provide any justification as to why the same was not filed on that very date before his office was allegedly closed on 2nd July, 2025.
13. THAT as evidenced in annexures SM1 and SM2, Mr. Onenga was evidently able to file and serve a Consent on Change of Advocates on 1st July, 2025, which clearly demonstrates that he had full access to his electronic devices and the CTS e-filing platform on that date, yet he failed to file the said Memorandum of Appeal which he alleges was ready for filing on 1st July, 2025.
14. THAT in a further attempt to mislead this Honourable Court, the Applicant and Mr. Onenga both depone in their sworn affidavits, that they had filed a request for typed proceedings, yet they deliberately omit to indicate the date of filing and went further to backdate the said request to 26th June, 2025 implying that that was when it was filed when in fact it was filed months later on 10th September, 2025 as evidenced on the CTS platform. (See Annexure SM3 – a copy of a screen capture of the CTS platform)
15. THAT I have been advised by my advocates on record, which advice I verily believe to be true, that the said request for typed proceedings further cannot be deemed as duly filed because it was lodged on 10th September, 2025 by Omongo Gatune Advocates, notwithstanding that a Consent for Change of Advocates had already been filed by OCO Law on 1st July, 2025, rendering OCO Law as the advocates on record for the Applicant.

16. THAT further to the above, Mr. Onenga depones that his office reopened in the first week of September, 2025, and therefore, if indeed the Memorandum of Appeal had been ready for filing on 1st July, 2025 as he claims, he has not given any plausible explanation as to why he waited another ten (10) days to file the same.
17. THAT in paragraph 9 of his Supporting Affidavit, the Applicant further attempts to hoodwink this Honourable Court by stating that his delay in filing the Memorandum of Appeal was of “approximately fifty-two (52) days,” yet he is well aware that it was actually far much longer amounting to a delay of eighty (80) days.
18. THAT the Applicant has not even attempted to adduce any evidence to demonstrate that he made any effort to follow up on his matter during the entire period of eighty (80) days when the filing of the appeal was delayed.
19. THAT I am informed by my advocates on record, which information I verily believe to be true, that equity aids the vigilant and not the indolent, and further that delay defeats equity, hence the Applicant should not be permitted to benefit from his own inaction and negligence.
20. THAT I am advised by my advocates on record, which advice I verily believe to be true, that the intended appeal does not raise any arguable grounds, lacks merit, has no reasonable chances of success, and there exists no compelling reasons to warrant the grant of leave as sought by the Applicant.

21. THAT that the Learned Magistrate in the trial Court delivered a well-reasoned Judgment based on the evidence adduced before him, having meticulously evaluated the pleadings, documentary evidence, and further applying guiding case law and established legal principles.
22. THAT it would be grossly unjust and contrary to the principles of finality in litigation to reopen a matter that has been conclusively determined and closed for over three (3) months, as doing so would undermine the sanctity of court judgments and the orderly administration of justice.
23. THAT litigation must come to an end, and it is in the interest of justice that there be finality to court proceedings. The Respondent stands to be greatly prejudiced if the Claimant's Application is allowed, as it would reopen settled issues and subject the Respondent to unnecessary and prolonged litigation as well as unnecessary additional legal costs.
24. THAT in light of the foregoing, I am advised by my advocates on record, which advice I verily believe to be true and sound, that the Applicant has not met the threshold to warrant this Honourable Court to grant its discretion and grant the orders sought on grounds:

- a. That no plausible explanation has been rendered by the Applicant to reasonably justify the inordinate delay of eighty (80) days in filing the Memorandum of Appeal.

- b. That despite claiming to have the Memorandum of Appeal ready for filing on 1st July, 2025, the Applicant's advocates on that same date filed only a Notice of Change of Advocates but failed to file the said Memorandum of Appeal, giving no justifiable reason whatsoever.
- c. That the intended Appeal lacks merit as it does not raise any arguable grounds after the delivery of a fair judgement by the trial Magistrate with a reasonable award granted to the Applicant.
- d. That prolonging a matter that was concluded over three (3) months ago would be unfair and prejudicial to the Respondent who stands to suffer undue hardship by continuing to expend significant time and administrative effort in defending an already resolved claim, thereby diverting attention from its core business operations and disrupting its normal business.
- e. That additionally, the Respondent would further be prejudiced by being forced to continue suffering financially by unduly paying legal costs and fees for a matter that was already concluded to its practical end over three (3) months ago.
25. THAT consequently, I am now advised by my advocates on record, which advice I verily believe to be true, that this Honourable Court should exercise its discretion to decline grant of the orders sought in the Application as the Application does not satisfy the conditions and guiding principles to warrant the exercise of this Court's discretion to the Applicant's advantage.

26. THAT ultimately, the instant Application is improper, ill-conceived, lacks merit and constitutes a clear abuse of the Court process and as a result I respectfully urge this Honourable Court to dismiss the Applicant's Application with costs for being frivolous, vexatious and an abuse of the Court process.

Decision

The application was canvassed by way of written submissions. Both parties filed.

27. The jurisdiction of this Court to enlarge time derives from Rule 18 of the Employment and Labour Relations Court (Procedure) Rules 2024 which provides:

“The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal.”

28. Section 79G of the Civil Procedure Act as set out above, which is also applicable, states that:

“Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

30. The foregoing law means that the threshold which the Intended Appellant ought to meet is that they must satisfy the Court that they had a good and sufficient cause for failing to

file the appeal in time; and they must show that the justice of the case favours the extension of time.

31. The Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat vs The Independent Electoral and Boundaries Commission & OTHERS [2014] eKLR*, considered at length and re – stated the principles which should guide a Court considering an application for leave to extend time. It stated: -

“From the above caselaw, it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

- a) *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;*
- b) *A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court*
- c) *Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;*

- d) *Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;*
- e) *Whether there will be any prejudice suffered by the respondents if the extension is granted;*
- f) *Whether the application has been brought without undue delay; and*
- g) *Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”*

32. In *Kenya Ports Authority v Silas Obengele Civil Application No Nai 297 of 2004 [2006] 2 KLR 112* the Court held that:

“Whereas it is now settled that whenever there is a delay, even for one day, there must be some explanation for it otherwise an extension may not be granted where there was material before the single judge from which he could and did conclude that the delay or the periods of delay...the full bench will not interfere”

33. I have taken into consideration the submissions by the parties and will consider the factors set out by the Supreme Court in the **Nicholas Salat case (supra)** in relation to this case. The delay in the present case is approximately 80 days. The reason advanced for the delay is the closure of the advocates’ office on account of rent distress within the period of filing the appeal. The applicant ought not be locked out of the appeal court on the basis of a mistake or a misfortune of his advocate. The court was persuaded that a good and sufficient reason for the delay was advanced. The court finds that this case makes a good reason for the extension of time to file an appeal and in the overall ends of justice.

An arguable point of law has been raised in the draft memorandum of appeal, of which this court is obliged to give an opportunity to the applicant to argue for determination.

34. The next question that I must consider is whether the Respondent will suffer prejudice if the Intended Appellant is granted leave to file their appeal out of time. I find that they will not, as they will be granted ample opportunity to defend the appeal.

35. In the upshot the application is allowed with costs awarded to the respondent. The memorandum of appeal to be filed within 14 days of this Order. Mention before the Court Deputy Registrar on the 20th January 2026 to confirm the status of filing of the record of appeal.

36. 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

Applicant- Absent

Respondent- Ms Bisher

ORIGINAL