



**Imbuga v Winguard Services Limited (Miscellaneous Application
E014 of 2025) [2025] KEELRC 3718 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3718 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E014 OF 2025
NJ ABUODHA, J
DECEMBER 19, 2025**

BETWEEN

MARTIN SABATIA IMBUGA APPLICANT

AND

WINGUARD SERVICES LIMITED RESPONDENT

RULING

1. The Applicant filed application dated 21st January, 2025 brought under Section 12 of the [Employment & Labour Relations Court Act](#) and Rules 47,49 and 68 of the [Employment & Labour Relations Court Rules](#).
2. The Applicant sought an order that this court grants the Applicant leave to file an appeal out of time against the Judgement and Decree in Milimani CMELRC NO. E1376 of 2022 delivered by Hon. Wangari Mbulikah on 4th November, 2024.
3. The application was supported by the grounds set on the face of this Application herein and the Affidavit of Willis Wetaba the Advocate in conduct of the matter for the Applicant who averred that: -
 - i. The annexed memorandum of appeal raises triable appeal.
 - ii. The judgement of the lower court was delivered in his absence due to unavoidable circumstances.
 - iii. The judgement was only published in the CTS on 16th January, 2025 way after 30 days for filing appeal.
 - iv. The Appellant was unable to lodge appeal without a copy of the judgment.
 - v. It would be unjust to shut out the Appellant from the seat of justice considering the abundance of unresolved issues left out by the lower court.



4. In reply the Respondent filed his Replying Affidavit sworn on 26th February, 2025 by Kathambi Rwito, Advocate for the Respondent who opposed the Applicant's Application where he averred that:-
- i. On the day the judgement was delivered on 4th November 2024, the Applicant's advocate was absent.
 - ii. The Applicant took no steps to request for a copy of the judgement from the lower court between 4th November 2024 and 16th January 2025.
 - iii. Equity aids the vigilant and not the indolent.
 - iv. The judgement sum was Ksh.85,623.75 and the Applicant had already issued two cheques each of Ksh. 42,500/= received by the Claimant's counsel on 18th December, 2024.
 - v. No valid reason is given for the delay in filing appeal.
 - vi. By receiving the cheques, the matter has been settled and extension of appeal time will prejudice the Claimant.

Applicant's Submissions

5. The Applicant through his Advocates, Wetaba, Were & Associates Advocates filed submissions dated 21st January, 2025.
6. It was submitted for the Applicant that the delay was caused by the judiciary and ought to count in allowing the Applicant to lodge an appeal.
7. In this regard, the Applicant submitted that the time between availing the judgement and the filing of the Application was six days and the court should take judicial notice of the court's vacation and the judgement was published only 2 days after vacation.
8. Counsel also submitted that the Application was brought in good faith and the Respondent would not suffer any prejudice while the Applicant would suffer prejudice if the application is not allowed.
9. The Applicant cited the case of *Susan Ogotu Oloo & Another v Doris Odindo Omolo* (2019) eKLR based on which it was submitted that extension of time was a matter of discretion and the application was filed timeously without delay and therefore there was a good reason for delay in filing the appeal in time.

Respondent's Submissions

10. The Respondent through his advocates Kathambi Rwito & Co. Advocates filed written submissions dated 25th February, 2025.
11. Counsel submitted that the Supreme Court had laid principles to guide extension of time. Reliance was placed on *Fabim Yasin Twaba v Timamy Issa Abdalla & 2 Others* (2015) eKLR where it was submitted that extension of time was not a right of a party and the burden was on the applicant to lay basis for such extension.
12. In this regard counsel submitted that the Applicant had not given a valid reason as no attempts were demonstrated to have been made towards requesting and obtaining a copy of the impugned judgment since its delivery on 4th November, 2024.
13. Counsel submitted that granting the orders would prejudice the Claimant as the matter had already been settled when the Applicant paid the decretal sum by way of two cheques.



Determination

14. This court has fully considered the Application, the Replying Affidavit by the Respondent and both parties' submissions together with the authorities relied upon in making the final determination in this matter.
15. The applicable Rule in applications of this nature is Rule 18 of *ELRC (Procedure) Rules, 2024* which is the guiding law in answering the question whether the prayer to enlarge time to file the appeal is merited. In *Charles N. Ngugi v ASL Credit Limited* [2022] eKLR the court held as follows:-

However, the intended appeal ought to have already been filed before or together with an application seeking leave to extend time for filing an appeal.
16. In this particular case the application has been filed with a draft Memorandum of Appeal. The Judgment in this matter was delivered on 4th November, 2024. The Applicant claimed that Judgment was delivered in the absence of the Applicant's advocate and was only uploaded in the e-filing portal on 16th January 2025. The Supreme Court in the case of *Nicholas Kiptoo Korir Arap Salat v IEBC and 7 Others* [2014] eKLR 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;

 1. 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;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made a case- to-case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 5. Whether there will be any prejudice suffered by the Respondent if the extension is granted;
 6. Whether the application has been brought without undue delay.
17. The Applicant had the burden of proving justifiable reasons for the delay to lodge appeal within 30 days of the delivery of the Judgement. The Applicant's advocate alluded to unavoidable circumstances leading to failure to attend court for the judgement. However, such circumstances were not adduced as to enable this court discern their impact on the current application. Further, the Applicant failed to demonstrate any effort in requesting for the judgment from the lower court. The court opines so because it is not disputed that the Applicant's advocate was aware of the date fixed for delivery of the impugned judgement but did not attend court.
18. Further, the Respondent's response was also that the judgment amount has since been settled. The Applicant raised no objection to this allegation. This court considers that indeed the Respondent paid the judgment sum by way of two cheque deposits to counsel to Claimant.



19. Even in the interest of justice coupled with the right to be heard under Article 50 of the Constitution and the same to be heard without undue regard to technicalities under Article 159(2) of the Constitution, this court finds no basis to pardon the Applicant.
20. Whereas the Applicant's case was also that he has an arguable Appeal, the Applicant had the duty to establish grounds for extension of time before arguing for a meritorious appeal. On reevaluation, this court finds no basis to extend the time for filing an appeal as no plausible reason has been demonstrated for delay. In the case of John Martin Muchiri Mugo v British-American Insurance Company (K) Limited [2018] eKLR, it was held that:

“From the narrative, the applicant allegedly became aware of the delivery of judgment on 22/6/2022. The Applicant sat on their rights till November, 2022 when they filed this application. There is no plausible explanation for the delay. I am thus not satisfied that there is explainable delay. From the record, what seems to have woken the Applicant is the filing of the party and party bill of costs on 30/8/2022 and served on 6/9/2022 as per annexure JMM2 in the Respondent's affidavit. It is not ease to drive out a party from the seat of justice. However, a party who watches the seat of justice rained on and only wakes up when someone else wants to sit on it, he does not call for mercy but condemnation. Equity only aids the vigilant. The Applicants were totally indolent. There is not explanation for the long delay.”
21. Therefore, to this court, delay, short or long has to be explained. The Applicant had the duty to explain the delay. Why the advocate failed to attend court on the date of judgement. Why there was no request for a copy of the judgement or decree, and materially, why the Appellant was waiting only to obtain a copy of the judgment through uploads to the court's e-filing system even having not requested for a copy? There was no explanation given.
22. The application is therefore found without merit and is hereby dismissed.
23. In the upshot, the court makes the following orders:
 - a. The Notice of Motion Application dated 21st January 2025 is devoid of merit and is dismissed.
 - b. As the Claimant desired that the matter remains as settled, each party to bear their own costs of the Application.
24. It is so ordered.

DATED AT NAIROBI THIS 19TH DAY OF DECEMBER 2025

DELIVERED VIRTUALLY THIS 19TH DAY OF DECEMBER 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

