

**IN THE COURT OF  
APPEAL AT NAIROBI**

**[CORAM: SICHALE JA (IN  
CHAMBERS)] CIVIL APPLICATION**

**NO. E278 OF 2025 BETWEEN**

**HASHIM D. MOHAMED.....APPLICANT**

**AN**

**D STATE CORPORATION  
ADVISORY**

**COMMITTEE.....1<sup>ST</sup>**

**RESPONDENT KENYA UTALII**

**COLLEGE.....2<sup>ND</sup> RESPONDENT MINISTRY  
OF TOURISM AND WILDLIFE.....3<sup>RD</sup> RESPONDENT AND**

**PUBLIC SERVICE COMMISSION.....INTERESTED PARTY**

*(Being an Application for Extension of Time to lodge and serve  
Notice and Record of Appeal against the Judgment of the  
Employment and Labour Relations Court (Nduma J), dated 20<sup>th</sup>  
March 2025*

**In**

**(Nairobi ELRC Petition No. E079 of 2024)**

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**RULING**

**1. Hashim D. Mohamed** (*“the applicant” herein*), has vide a motion on notice dated **28<sup>th</sup> April 2025**, brought pursuant to the provisions of **Section 3A, 3B of the Appellate Jurisdiction Act, CAP 9 of the Laws of Kenya, Rule 4 Court of Appeal Rules 2022, Article 159 of the**

# **Constitution of Kenya 2010 and all**

**other enabling provisions of the Law**, invoked the jurisdiction of this Court sitting as a Single Judge, seeking the following orders;

***“i. Spent.***

***ii. THAT the applicant be granted leave to appeal out of time against the judgment and orders of the Employment and Labour Relations Court of Kenya at Nairobi by Hon. Justice Nduma Nderi in the ELRC Petition No. E079 of 2024, dated and delivered on the 20<sup>th</sup> March 2025, lodge and serve his Notice of Appeal and the Draft Memorandum of Appeal attached herein be deemed properly filed.***

***iii. THAT the costs of and incidental to this application abide the result of the intended appeal.”***

2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant who deposed *inter alia* that he had been out of the country since 2<sup>nd</sup> January 2025, attending to urgent personal matters and was thus unable to give instructions to his advocates to file the appeal within the prescribed 14 days.

3. He further deposed that the delay was not deliberate but was

caused by circumstances beyond his control, namely; his  
absence

from the country and that further he had an arguable appeal with high chances of success.

4. The motion was opposed by the 2<sup>nd</sup> respondent vide Grounds of Opposition dated **29<sup>th</sup> August 2025**, on the grounds *inter alia* that the same was bad in law, an abuse of the court process, and a waste of precious judicial time, and that further, the same did not meet the threshold for granting of the orders sought as set out in the Supreme Court Case of **Nicholas Kiptoo Korir Arap Salat vs. IEBC [2014] eKLR**.
5. There was no response on the part of the 1<sup>st</sup> & 2<sup>nd</sup> respondents and the interested party despite having been served with a copy of the application and the hearing notice on **13<sup>th</sup> May** and **14<sup>th</sup> October 2025**, respectively.
6. It was submitted for the applicant that there was a delay of just over 1 month, which delay was not unreasonable or inordinate and that it was modest in the circumstances, and it ought to be excused, as it had been caused by the applicant's absence from the country from 2<sup>nd</sup> January 2025, attending to some urgent personal matters.

7. It was further submitted that the respondents would suffer no prejudice if the instant motion was allowed, but on the contrary, denying the application would gravely prejudice the applicant thus foreclosing his right of appeal.
8. On the other hand, it was submitted for the 2<sup>nd</sup> respondent that the judgment that the applicant intends to appeal against was delivered on 20<sup>th</sup> March 2025 and the applicant subsequently lodged his Notice of Appeal more than 4 weeks later on 6<sup>th</sup> May 2025, contrary to the prescribed period of 14 days.
9. It was further submitted that the reason given for the delay namely; the applicant's absence from the country was not satisfactory as communication of instructions could have conveniently been done virtually while the applicant was out of the country.
10. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the 2<sup>nd</sup> respondent's grounds of opposition, the rival submissions by the applicant and the 2<sup>nd</sup> respondent, the cited authorities and the law.
11. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not are now old hat. The

Court

has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion, the Court should do so judiciously.

12. See **Patel vs. Waweru & 2 Others [2003] KLR 361 at pp. 362-3** where this Court had the following to say in respect to Rule 4 of the Court of Appeal Rules;

***“This is a matter in which the learned single Judge was called upon to exercise his unfettered discretion under rule 4 of the Rules of this Court. All that the applicant was required to do was to place sufficient material before the learned single Judge explaining the reason for what was clearly an inordinate delay. How does a single Judge exercise his discretion” In LEO SILA MUTISO V. ROSE HELLEN WANGARI MWANGI - Civil Application no. NAI. 251 of 1997 this Court stated:-***

***“It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of the delay. Secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted”***

- 13.** In the instant case and as regards the length of the delay, the impugned judgment was delivered on **20<sup>th</sup> March 2025**, and the instant motion was subsequently filed on or about **28<sup>th</sup>**

**April 2025.**

There has therefore been a delay of about **1 month and 8 days**, which I do not consider to be inordinate.

14. Turning to reasons proffered for failing to file the appeal on time, it was contended that the same was due to the fact that the applicant was out of the country hence his inability to relay instructions to his advocates to appeal within the prescribed time.
15. I have looked at copies of the passport annexed to the application evidencing that the applicant was out of the country during the said period.
16. I note that the same shows that the applicant exited the country on 2<sup>nd</sup> January 2025. The applicant does not however state when he came back to the country and I also note that the impugned judgment was delivered **20<sup>th</sup> March 2025**, way after the applicant had travelled outside the country.
17. Be that as it may and in light of the fact that the delay herein has not been inordinate and the applicant's application remains largely unopposed save for the 2<sup>nd</sup> respondent who filed grounds of opposition which grounds are not provided for under the Court of Appeal Rules, I reluctantly accept the reasons

given for the delay

and consequently, I consider the reasons given for failure to file the appeal on time to be reasonable.

18. Ultimately therefore, I am of the considered opinion that the delay herein has sufficiently been explained to the satisfaction of this Court.
19. As to the arguability or otherwise of the intended appeal, I cannot make a determination of this issue sitting as a Single Judge and I will therefore not delve into the issue.
20. Finally on prejudice, I am satisfied that the applicant will stand to suffer prejudice if the instant motion is not allowed as he will have been completely ousted from the seat of justice thereby foreclosing his right of appeal.
21. Additionally, the applicant's petition was merely dismissed and I am satisfied that the respondents will not be prejudiced in anyway if the instant motion which is largely unopposed, save for the 2<sup>nd</sup> respondent is allowed.
22. Taking into totality all the circumstances of this case, I am of the considered view that the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of

my unfettered discretion pursuant to Rule 4 of this Court to extend time.

23. Accordingly, the applicant's motion dated **28<sup>th</sup> April 2025**, is merited and the same is hereby allowed as prayed.

24. The applicant shall proceed to file the appeal within a period of **30 days** from the date of this ruling, failure to which these orders shall stand vacated.

25. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

**Dated and delivered at Nairobi this 19<sup>th</sup> day of December 2025.**

**F. SICHALE**

.....  
**... JUDGE OF  
APPEAL**

*I certify that this is a  
True copy of the original  
Signed*  
**DEPUTY REGISTRAR**