

**IN THE COURT OF
APPEAL AT
KISUMU**

**(CORAM: KIMARU, JA (IN CHAMBERS))
CIVIL APPEAL (APPLICATION) NO. E243 OF
2024**

BETWEEN

**COUNTY GOVT OF VIHIGA.....APPLICANT
AND
KENYA UNION OF CLINICAL OFFICERS & 76
OTHERS**

RESPONDENTS

(Being an application for extension of time to file the notice of appeal out of time from the Judgment of the Employment and Labour Relations Court of Kenya at Bungoma (Keli, J) dated 26th May, 2023

in

ELRC Cause No. 32 of 2021)

RULING

1. County Government of Vihiga, the applicant herein, moved the Court by notice of motion, essentially under **Rule 4** of the **Court of Appeal Rules** seeking to be granted leave to file and serve the notice of appeal out of time. The applicant states that it was aggrieved by the decision rendered by the trial Court in **Bungoma ELRC Cause No. 32 of 2021** between the respondents and itself. The

applicant states that the reason why the it did not lodge the notice of appeal in time was because the trial court did not render final orders on the day the interim Judgment was delivered but rather directed parties **“to**

negotiate quantum payable as salary arrears to the respondents.” The negotiations, ultimately, bore no fruit.

2. The matter was referred back to the trial Judge who computed the salary arrears and rendered a Ruling on 30th November, 2023. The applicant lodged a notice of appeal in respect of the Ruling only to be later confronted by a decision of this Court to the effect that no valid notice of appeal had been filed since the applicant had not challenged the original interim Judgment of the trial court. This decision was rendered by this Court on 31st July, 2025. This prompted the applicant to file the present application on 5th August, 2025.
3. In essence, the applicant attributes its failure to lodge the notice of appeal in time to legal misadventure that was occasioned by its misapprehension on when it was required to lodge the notice of appeal at the time. After this Court pointed out the applicant’s mistake, the applicant went back to the drawing board and filed the present application. The applicant pleads with the Court to be given a chance to ventilate its appeal before this Court in light of the sum involved and in the interests of justice.

4. The application is opposed. **Hawkins Aling'o**, the 1st

respondent's Vihiga County Branch chairman, swore a
replying

affidavit in opposition to the application. He was of the firm view that the application's sole purpose was to delay the just conclusion of the case, and further, to frustrate the respondents from enjoying the fruits of their Judgment. The respondents pointed out that the applicant had opted to file an application for review against the decision before the trial court and was therefore precluded from filing an appeal to this Court. He deponed that the respondents had suffered since they had worked for periods ranging from 20 to 22 months without pay. The Court should therefore disallow the application to bring to an end the endless litigation being pursued by the applicant.

5. The respondents relied on several decisions of this Court to support its assertion that the applicant is undeserving of exercise of discretion by this due to its indolence and undue delay in lodging the present application for extension of time to lodge the notice of appeal out of time. In his lengthy replying affidavit, the deponent swore that there were constitutional and jurisdictional matters of law that precludes this Court from favourably considering the applicant's application. The respondents urged the Court to dismiss

the application with
costs.

6. In application under **Rule 4** of the **Court of Appeal Rules**, this Court has unfettered discretion to consider whether or not to grant the application. Although unfettered, this jurisdiction is guided by principles which this Court has over time laid down to guide it. In **Wells Fargo Limited v. Symon Migwi Karanja & 12 others [2020] eKLR**, the Court set out the principles to include ***“the length of delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has constitutionally underpinned right of appeal.”***

7. In the present application, the applicant has given the reason for delay to be a mistake in apprehending the purport of the interim Judgment and the subsequent final decision that was embodied in the Ruling delivered by the trial Court on 30th November, 2023. Until it was pointed out to the applicant by this Court, the applicant assumed, wrongly as it transpired, that its grievance was with the Ruling and not the interim Judgment that subsequently led to the Ruling.

8. The applicant filed the present application within seven (7) days of the delivery of the Ruling by this Court pointing out the misstep taken by the applicant. The applicant states that it is desirous of pursuing its right of appeal more so on account of the sums involved and other legal issues that arose during trial. On their part, the respondents were not convinced that the applicant gave sufficient reasons for its delay in lodging the notice of appeal in time. They were of the view that the applicant was intent on frustrating them from enjoying the fruits of the Judgment.

9. This Court is persuaded that the applicant gave convincing reasons for the delay in lodging the notice of appeal in time. It was evident that the applicant was under the mistaken belief that it did not require or need to file a notice of appeal after the initial interim Judgment was delivered. This failure to appreciate this essential step, negatively impacted subsequent proceedings that the applicant pursued before this Court. Such mistakes, being human, in the circumstances of this application, cannot be punished to the detriment of the applicant's constitutional right of appeal to this Court.

10. It was evident that the applicant was diligent and did not waste time when it became aware of procedural error that it had committed. The present application was filed within **seven (7) days** after the Court pointed out the procedural mistep that the applicant had taken. The objection to the application by the respondents in their lengthy replying affidavit, essentially, raised issues of merit or otherwise of the intended appeal which is beyond the remit of this Court when considering the present application.

11. In the circumstances therefore, the application has merit.

It is hereby allowed. The applicant shall file and serve the notice of appeal within **fourteen (14) days** of today's date. They shall file and serve the record of appeal within **forty five (45) days** of service of the notice of appeal. The respondents shall have the costs of the application.

Dated and delivered at Kisumu this 21st day of January, 2026.

L. KIMARU

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JUDGE OF APPEAL

**I certify that this is
a true copy of original.**

Signed

DEPUTY REGISTRAR.