

**IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: TUIYOTT, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAI E490 OF 2025

BETWEEN

KUKU FOODS KENYA LIMITED.....APPLICANT

AND

AGATA WANGARI MUIGAI.....RESPONDENT

*(Being an application for extension of time within which to file an application requesting typed proceedings, memorandum of appeal and record of appeal against the judgment and decree of the Employment and Labour Relations Court at Nairobi (**Mathews Nduma, J.**) delivered on 8th May 2025*

in

ELRC Cause No. 777 of 2019

RULING

- [1] In the notice of motion dated 11th August 2025 **Kuku Foods Kenya Limited**, the applicant, seeks enlargement or extension of time to file and serve the respondent with an application requesting for typed proceedings, memorandum of appeal and record of appeal.
- [2] The judgment sought to be impugned was delivered on 8th May 2025.

The applicant's former advocates SED Legal LLP, filed a notice of appeal dated 14th May 2025 signifying the applicant's intention to appeal the judgment. There was a change of advocates with the current advocates for the applicant, Coulson Harney LLP, filing an

application for stay of execution on 30th June 2025. On the same date, the applicant's former advocates confirmed in an email of 30th June 2025 that they had inadvertently failed to file an application requesting for typed proceedings. The consequence is that the applicant is unable to file its substantive appeal within the stipulated timeframe and does not enjoy the suspensory benefits of the proviso to Rule 84(1) of the Court of Appeal Rules. All these are deposed to in the affidavit of **Sylvia Githogori**, the Legal Compliance Manager of the applicant company, sworn on 11th August 2025.

[3] In response, the respondent contends that the 30-day period to request for proceedings lapsed on 13th June 2025 before the applicant had made the request and the 60-day window for instituting an appeal expired on 13th July 2025, before the applicant had lodged an appeal. The attempt by the current advocates for the applicant was made on 30th June 2025, 17 days after the deadline to do so had lapsed. It is argued that whereas a client should not be punished for their advocate's mistake, the principle applies where the mistake is explained, not negligent, and the application for extension is made without delay.

[4] It is further contended that the mistake was one of sheer indolence and negligence as counsel for the applicant had a simple statutory duty to request for proceedings within 30 days. Also, that the applicant did nothing to progress its appeal until it

changed

advocates on 30th June 2025, 53 days later and even then, the current application was not filed until 11th August 2025, a further 42 days delay.

[5] The respondent laments that she will suffer significant prejudice if the application is allowed as she has in her favour a judgment for a substantive sum of money, costs and interest and granting extension will further delay her ability to enjoy the fruits of the judgment as she has been out of work without compensation since her wrongful dismissal in 2019, and any further delay in litigation inflicts financial and emotional strain on her.

[6] This Court has considered the material before it and the submissions filed on behalf of the parties.

[7] The power granted to a single judge to extend time under the provisions of Rule 4 is discretionary but guided by well laid out principles which include the length of the delay; that the delay is explained to the satisfaction of the court; whether there will be prejudice suffered by the respondent if the extension is granted; whether the application is brought without undue delay; and public interest among other things. See **Nicholas Kiptoo Arap**

Korir

Salat vs. IEBC & 7 Others Supreme Court Application No. 16 of

2014 [2014] eKLR.

[8] The lapse in applying for certified copies of proceedings within the time prescribed by the rule is attributed to mistake of

counsel who

previously represented the applicant. Counsel readily concedes to that lapse in an email dated 30th June 2025 to the current advocates. The task of requesting for typed proceedings on time is, no doubt, a simple one. But it is human to sometimes overlook even the simplest of tasks. It must however be borne in mind that the applicant's counsel filed the notice of appeal on time, an indication of its seriousness to challenge the appeal. It cannot be said that the applicant or its counsel suffer a pattern of inaction, indolence or negligence and this Court is willing to overlook the instance of indiligence.

[9] It is true as contended by respondent that the appeal ought to have been filed by 13th July 2025 and the present application filed on 11th August 2025 is about a month late. It does not seem to me that this delay in bringing this plea for extension is inordinate.

[10] Overall, the delay is not excessive and has been explained and is therefore excusable. But I must still bear in mind whether to grant the extension sought will prejudice the respondent more than is necessary. The prejudice raised by the respondent is that there will be further delay in her enjoying the fruits of her monetary decree. This argument is attractive but not quite correct. In granting extension of time, this Court does not stay execution of the decree that is in the hands of the respondent.

[11] Ultimately, the Court allows the application of 11th August 2025 in terms that the applicant shall within thirty (30) days hereby file and serve the record of appeal. Costs to abide the intended appeal.

Dated and delivered at Nairobi this 30th day of January 2026.

F. TUIYOTT

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

