

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**(CORAM: JAMILA MOHAMMED, JA (IN  
CHAMBERS)) CIVIL APPLICATION NO. E569 OF  
2025**

**BETWEEN**

**CLIFFORD OTWERE LIVOI.....APPLICANT**

**AND**

**SUNPAR PHARMACEUTICALS LTD.....RESPONDENT**

**(Being an application for leave to file the record of appeal  
out of time from the judgment of the Employment and  
Labour Relations Court (Mathews Nduma, J.) dated 15<sup>th</sup> May  
2025 at Nairobi**

**in**

**Nairobi ELRC Cause No. 173 OF 2021**

**\*\*\*\*\***

**RULING**

**Background**

1) **Clifford Otwere Livoi** (the applicant) has moved this Court by way of a Notice of Motion dated 30<sup>th</sup> July 2025 expressed to be brought under **Rules 5, 44** and **88** of the **Court of Appeal Rules, 2022**, seeking *inter alia* extension of time to file and serve a record of appeal out of time.

**Sunpar Pharmaceuticals Ltd** is the respondent herein.

2) The application is supported by the grounds on the face of the motion and by a supporting affidavit sworn by the applicant. The applicant

depones that he applied for certified copies of the proceedings and decree within time but the same were not supplied promptly. He further avers that a Certificate of Delay has since been issued and that no prejudice will be suffered by the respondent if the orders sought are granted.

3) Despite service of the hearing notice, the Respondent did not file any replying affidavit or written submissions.

### **Submissions**

4) The applicant who was acting in person filed written submissions dated 3rd November 2025 reiterating the grounds of the application. It was his submission that the delay of seven (7) days is not inordinate and is explained by the Certificate of Delay.

5) The applicant further submitted that the grant of the instant application will not prejudice the respondent in any way. Further, that he has weighty grounds of appeal and it will be an exercise in futility to proceed without being granted extension of time to file the record of appeal. Further, that he has an arguable appeal with high chances of success

### **Determination**

6) I have considered the notice of motion, the grounds thereof, the supporting affidavit, the applicant's submissions and the law. The

principles guiding the exercise of discretion under Rule 4 are settled, as set out in **Fakir Mohamed v Joseph Mugambi & 2 Others [2005] eKLR** in the following terms:

***“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path... As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possible) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factor.”***

7) The Certificate of Delay dated 23<sup>rd</sup> July 2025 indicates that it was ready for collection on 23<sup>rd</sup> July 2025. The instant application was filed on 30<sup>th</sup> July 2025. The applicant contends that he has an arguable appeal on the ground *inter alia* whether the Employment and Labour Relations Court (ELRC) erred by failing to take into account the applicant’s evidence that he was coerced to resign from employment before his termination. Without going into the merits of the intended appeal as this will be determined by the full bench which will be seized of the appeal, I am satisfied that the intended appeal is arguable. See **Muchugi Kiragu v James Muchugi Kiragu & another Civil Application No. NAI. 356 of**

**1996.**

**8)** On the degree of prejudice to the respondent, I am called upon to balance the competing interests of the parties, that is, the injustice to the applicant in denying him an extension, against the prejudice to the respondent in granting an extension. The applicant is aggrieved by the impugned judgment and is desirous of appealing against the said judgment out of time. **See: Richard Nchapi Leiyagu vs IEBC & 2 Others, Civil Appeal No. 18 of 2013.**

9) The upshot is that I find merit in the application. In the circumstances, the Notice of Motion dated 30<sup>th</sup> July 2025 is allowed. The applicant shall file and serve the record of appeal within fourteen (14) days from the date of this ruling. Costs of this application to abide by the outcome of the intended appeal.

**Dated and delivered at Nairobi this 30<sup>th</sup> day of January, 2026**

**JAMILA MOHAMMED**

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

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**