

**IN THE COURT OF APPEAL
AT NAIROBI**

**(CORAM: TUIYOTT, JA (IN
CHAMBERS) CIVIL APPLICATION NO.
E411 OF 2025 BETWEEN**

**MARIA NJOROGE.....1ST APPLICANT
RACHEL LAGAT.....2ND APPLICANT
JOSEPHINE KINYALI.....3RD APPLICANT
JEMIMA MUEMA.....4TH APPLICANT
JOSHUA NDAMBUKI.....5TH APPLICANT**

AND

LAICO REGENCY HOTEL NAIROBI.....RESPONDENT

*(Being an application for extension of time to file an Appeal out of time from the judgment of Employment and Labour Relations Court at Nairobi (**Nduma Nderi, J.**) Dated 13th March, 2025*

in

**ELRC CAUSE NO. E446 OF
2021)**

RULING

[1] The application dated 14th July, 2025 seeks an order for extension of time within which to file and serve a memorandum of appeal and record of appeal against the decision of **Mathews Nduma Nderi, J.** (as he then was) delivered on 13th March, 2025 in Nairobi ELRC Cause No.

E446 of 2021.

[2] In an affidavit of **Maria Njoroge**, the 1st applicant, sworn on even date, the delay in acting on time is explained as follows. Once the judgment was delivered on 13th March, 2025, the applicants made follow ups with their previous advocate to explore legal avenues of challenging the said judgment but their efforts were futile as he was unresponsive to calls and unavailable for office visits. This compelled them to seek alternative legal representation from the firm of Maanzo and Company Advocates who engaged the previous advocates and after many attempts, the exchange culminated in a formal consent allowing the firm of Maanzo & Company Advocates to come on record. The current advocates then advised them that the time limit for lodging an appeal had lapsed. The applicants however point out that once the judgment was delivered, the matter was not immediately marked as concluded as the court scheduled a mention on 18th June, 2025 to confirm compliance with order (b) of the judgment, and the matter was eventually marked as closed on 18th June, 2025. They assert that they have an arguable appeal and the delay in

filing the appeal was neither deliberate nor inordinate but was solely occasioned by

the neglect and inaction of their previous advocate and no prejudice will be occasioned to the respondent if the orders sought are granted.

- [3] The respondent herein opposed the application through a replying affidavit of **Jamal Ahmed**, the caretaker manager of the respondent, sworn on 5th November, 2025. He contends the application is an exercise in futility as the applicants have neither filed a notice of appeal nor a letter requesting for the decree and proceedings as per rule 77 and 84 of the Court of Appeal Rules. The prayers sought in the applicants' application are therefore incapable of being granted and are a nullity, *ab initio*. In addition, the judgment was delivered on 13th March, 2025 and the statutory period for lodging a notice of appeal lapsed on 27th March, 2025 and the inordinate delay is unexplained. The respondent contends that mistakes or lapses by counsel do not automatically entitle a party to extension of time particularly where the delay is prolonged and unexplained and no evidence has been adduced to show steps taken by the applicant to mitigate the delay. Further, the applicants'

erstwhile advocates were in constant communication with their

advocates regarding the matter and at no point did the applicant's former advocates convey their dissatisfaction with the payment computation as directed by the court. It is contended that the assertion that the former advocates of the applicants failed to update them is a ploy to mislead this court. It is argued, in a sum, that the applicants have failed to satisfy the legal requirements for the exercise of this court's discretion in their favour.

[4] The parties filed submissions, substantially a regurgitation of the narrative and arguments set out above.

[5] The unfettered discretion granted to this Court by Rule 4 of the Court of Appeal Rules when considering an application for extension of time is exercised judiciously within the straits of well settled principles restated in **Fakir Mohamed v Joseph Mugambi & 2 others** [2005] KECA 340 (KLR)

to be: -

“The period of delay, the reason for the delay, (possibly) 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 factors...”

[6] Rule 77 requires a notice of appeal be lodged within fourteen (14) days of the date of the decision against which it is desired to appeal. It is common ground that no notice of appeal has been filed and neither have the applicants sought leave of this court to file one out of time. The only order sought is leave to file a memorandum of appeal out of time. While the applicants should have as also sought to file a notice of appeal out of time, the truth is that time for also instituting the appeal itself had lapsed by the time the application was filed. For that reason, this court will overlook this technical omission in the application and reflect on its merit.

[7] The primary reason given for the delay is the inaction on the part of the applicant's former advocate. The respondent doubts this as the advocate was engaged with its own advocates ostensibly to settle the matter. While that may be so this does not mean that the advocate was similarly engaged with his clients. This court notes that had a notice of

appeal been filed within time, the time for instituting an appeal would have lapsed on 20th May

2025. In that context the application now before court dated 14th July, 2025 would be about 50 days late, a period that is not overly inordinate. This Court is willing to overlook this delay so as to give the applicants opportunity to pursue their right of appeal. In doing so, the court is not insensitive to the concern by the respondent that litigation must come to an end. However, this must be weighed against the right to appeal which was always available to the applicants had they not been 50 days late. On this occasion, the court will lean in favour of giving the applicants that opportunity.

[8] Ultimately the application dated 14th July 2025 is hereby allowed. The applicants shall institute and serve the appeal, which shall include a notice of appeal, within forty-five (45) days of this Ruling. Costs shall abide the outcome of the appeal.

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

F. TUIYOTT

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JUDGE OF APPEAL

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

Signed

DEPUTY

REGISTRAR.