

**IN THE COURT OF
APPEAL AT NAIROBI
(CORAM: ACHODE JA, (IN
CHAMBERS)) CIVIL APPLICATION NO
E385 OF 2025 BETWEEN**

RICHARD KAMAJUGO.....APPLICANT

AND

TRADEMARK EAST AFRICA LIMITED.....RESPONDENT

*(Being an application for leave to lodge an appeal against the judgment of
the Employment and Labour Relations Court at Nairobi (Ndolo J.) dated 19th
December, 2024*

in

ELRCC No. E650 of 2021

**** RULING**

1. By a Notice of Motion dated 30th June, 2025, brought pursuant to **rules 4, 75 and 82** of the **Court of Appeal Rules, 2022**, Richard Kamajugo the applicant, seeks extension of time to file a Memorandum of Appeal and Record of Appeal against the judgment of Employment and Labour Relations Court (ELRC), dated 19th December, 2024, delivered by Ndolo J. That the record of appeal lodged out of time be deemed as properly filed.
2. The grounds of the application as stated on the face thereof and the supporting affidavit sworn by the applicant on 30th June, 2025 are that following the judgment delivered on 19th December 2024, he lodged a Notice of Appeal on 28th January, 2025 and served it upon the respondent on 17th February, 2025. That he wrote a letter

bespeaking the

certified proceedings on 23rd December 2024 but they were only supplied to him on 7th May, 2025 and a certificate of delay issued on 10th June, 2025.

3. The applicant avers that the delay in filing the Memorandum and Record of Appeal was caused by the delay in supplying the certified proceedings and was neither inordinate nor intentional. That the notice of appeal was lodged on 23rd Dec 2024 but was endorsed by the registry on 28th January, 2025. Thereafter, an attempt to file the record on the Judiciary e-platform was unsuccessful.
4. The applicant avers that the respondent will not suffer prejudice if the orders sought are not granted. That on the other hand, the applicant will be greatly prejudiced if the orders are not granted.
5. The applicant's submissions dated 30th June, 2025 were filed by the firm of CSA Advocates. They urge that the intended appeal raises serious and arguable grounds that is: whether the trial court erred in its interpretation and application of the employment and labour relations law and principles; whether the applicant was subjected to procedural and substantive fairness in terminating his employment; and, whether the trial court properly analysed the evidence before it.
6. It is urged that the respondent will not suffer prejudice that cannot be compensated by costs. On the other hand, the applicant will be locked out of the appellate process for no fault of his own.

7. In the submissions the applicant relies on the principles applicable in the exercise of discretion to extend time as were laid down by the Supreme Court in **Nicholas Kiptoo Salat vs IEBC and 7 others [2014] eKLR**. These were that: extension of time is not a right but an equitable remedy; that the whole period of delay must be explained; that the application must be made in good faith and without unreasonable delay; that the court should consider the length of delay, reasons for delay, chances of success of the intended appeal, and the degree of prejudice to be suffered by the other party.
8. On whether the intended appeal is arguable, counsel relied on **Civil appeal No. E011 of 2020 - Paul Wandati Mbochi vs Stephen Kimotho Karanja [2020] eKLR**, where the Court held that, an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court.
9. The respondent filed a replying affidavit sworn by Leyla Ahmed on behalf of the respondent and submissions through the firm of TrippleOKLaw LLP Advocates both dated 26th January 2026. They urge that the applicant's reliance on the time taken to prepare and supply the proceedings is misplaced and untenable in view of the provisions of **rule 84 Court of Appeal Rules**. That the registry informed the applicant that the typed proceedings were ready on 30th April 2025, but he did not collect them till 7th May 2025. Further that he waited till 10th June, 2025, to request for the certificate of delay. He contends that the cumulative lapses

in

time underscore a pattern of indolence and procedural neglect, inconsistent with the conduct of a litigant seeking the equitable indulgence of the Court.

10. The respondent cited the Supreme Court decision in **Nick Salat** (*supra*) to urge that the discretion to extend time is indeed unfettered, and it is incumbent upon the applicant to explain the reason for delay in making the application for extension of time, and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.
11. The respondent restated the principles set out in **Nick Salat** (*supra*) and in the case of **Maina v Kamweti: (Civil Application No.12 of 2019) [2022] KECA 390 (KLR)** that in determining an application under rule 4 the Court considers among other factors, the length of the delay, the reason for the delay, possibly the chances of success of the intended appeal, and the degree of prejudice to be occasioned to the respondent if the application is granted.
12. The respondent also placed reliance on the case of **Njuguna v Magichu & [2003] KECA 162 (KLR), Abuya Adoyo (Civil Application E001 of 2021) [2022] KECA 482 (KLR)** to urge that the applicant has not demonstrated good and sufficient reason for the extension sought.
13. I have considered the application, the affidavits the rival submissions and the law, to determine whether it has merit. The unfettered discretion of this Court to extend time for the

filing of appeal is donated by **rule 4** of the **Court of Appeal Rules, 2022**, as follows:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

14. The exercise of the discretion of this Court under **rule 4** is unfettered. There is no limit to the number of factors the Court would consider so long as they are relevant. These are such as the period and reason for the delay, the possible 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. These are all relevant but not exhaustive factors. (See - the Court of Appeal case of **Fakir Mohamed vs. Joseph Mugambi & 2 others [2005] eKLR**).

15. Regarding the reason for the delay and the period of the delay in filing the Memorandum of Appeal. The applicant submits that the delay is not inordinate and should be excused because upon the judgment being delivered on 19th December 2024, he lodged a Notice of Appeal on 23rd

December, 2024 which was endorsed by the registry on 28th January, 2025. It was served upon the respondent on 17th

February, 2025. He attributes the delay in filing the Memorandum of Appeal to the delay in supplying the certified proceedings and asserts that it was neither inordinate nor intentional. Thereafter, attempts to file the record on the Judiciary e-platform were unsuccessful.

16. In **Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR** the Court of Appeal addressed the question of delay and held that;

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

17. I begin with the period of the delay. The registry informed the applicant that the typed proceedings were ready on 30th April 2025. He collected them on 7th May 2025 and obtained the certificate of delay on 10th June, 2025. **Rule 84 (1)** stipulates as follows:

“Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry within sixty days after the date when the notice of appeal was lodged-

- (a) A memorandum of appeal in four copies;**
(b) The record of appeal in four copies;”

18. In computing the time within which the appeal is to be instituted there shall be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy. The certificate of delay having been provided on 10th June, 2025 the appellant was still within time limit of 60 days at the time of filing this Notice of Motion dated 30th June, 2025. I find therefore, that there was no delay.
19. Having so far found, I will not delve into other issues as to whether the appeal has chances of succeeding, whether the reason for the delay is excusable, and whether the respondent will suffer prejudice if the application is granted.
20. Consequently, the Notice of Motion dated 30th June, 2025 is found to have merit and is allowed with orders that:
- i. The Memorandum of Appeal and Record of Appeal already lodged be and are hereby deemed to be properly filed.***
 - ii. The Memorandum of Appeal and Record of Appeal be served upon the respondent within seven days of this ruling***
 - iii. The appellants shall bear the costs.***

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

L. ACHODE

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**. JUDGE OF
APPEAL**

I certify that this

*is a true copy of the
original **Signed**
DEPUTY REGISTRAR*