



Ontegi (Suing as the legal representative of the Estate of the Late Evans Moya Moindi) v Kisii County Government & another (Civil Application E161 of 2025) [2026] KECA 215 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KECA 215 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E161 OF 2025
LK KIMARU, JA
FEBRUARY 5, 2026**

BETWEEN

JACKSON MOINDI ONTEGI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE EVANS MOYA MOINDI) APPLICANT

AND

KISII COUNTY GOVERNMENT 1ST RESPONDENT

HE. JAMES ONGAE 2ND RESPONDENT

(Being an application for extension of time to file and serve the record of appeal out of time from the Judgment of the Employment and Labour Relations Court of Kenya at Kisumu (S. J. Radido, J) dated 1st March, 2023 in ELRC No. 12 of 2020)

RULING

1. The applicant was aggrieved by the Judgment delivered on 1st March, 2023 by the Employment and Labour Relations Court(ELRC), Kisumu. The applicant lodged the notice of appeal in time. The applicant, however, did not file the record of appeal within the sixty (60) days period prescribed under Rule 77(1) of the Court of Appeal Rules. The applicant has filed the present application substantially under Rule 4 of the Court of Appeal Rules seeking to be granted extension of time to file and serve the record of appeal out of time. The applicant explains the reason for delay was due to negligence by his former advocate who failed to file and serve the record of appeal in time. The applicant further attributed the said delay to inadvertence and professional lapse by his former advocates. The applicant pleads with the Court to give him a chance to ventilate his appeal before this Court. He is of the view that his appeal has high chances of success. The applicant urged the Court not to punish him for the mistake of his former advocate. He observed that the respondent would not suffer any prejudice by the applicant being given a chance to exercise his right of appeal to this Court. The application is supported by the annexed affidavit of Jackson Moindi Ontegi, the applicant.



2. The application is not opposed. Moses Oirere, the Senior Litigation Counsel of the respondent, swore a replying affidavit in answer to the application. The respondents were not convinced that the applicant gave sufficient reasons to enable this Court exercise its discretion in his favour. However, in the interest of justice, the respondents were not opposed to the applicants being given a chance to ventilate his right of appeal to this Court provided that applicant pays the costs of the application.

3. Since the application is conceded, the same is hereby allowed.

The applicant is granted extension of time to file and serve the notice of appeal within fourteen (14) days of today's date. The record of appeal shall be filed and served within forty-five (45) days of today's date. The applicant shall bear the costs of the application.

DATED AND DELIVERED AT KISUMU THIS 5TH DAY OF FEBRUARY, 2026.

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR

