

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: NJUGUNA, J.A. - IN CHAMBERS)

**CIVIL APPEAL (APPLICATION) NO. E763 OF
2025**

BETWEEN

RITA NDUNGE NDUNDA.....APPLICANT

AND

NATIONAL SOCIAL SECURITY FUND.....RESPONDENT

*(Being an application for extension of time to file a record of appeal
against the judgment of the Employment and Labour Relations Court at
Nairobi (Baari, J.) dated 8th May 2025*

in

ELRC Cause No. 860 of 2019)

R U L I N G

1. The applicant filed the notice of motion dated 16th December 2025 for enlargement of time for filing of the record of appeal against the judgment delivered on 8th May 2025. She has also sought that the record of appeal attached herein be deemed as duly filed upon payment of the requisite fee.
2. The judgment sought to be impugned was delivered on the 8th May 2025.
3. The applicant avers that she collected her file from her

previous advocates, M/s Onyony & Company Advocates, and instructed

the firm of Osundwa & Co. Advocates, who applied for a copy of the judgment and the typed proceedings on her behalf.

4. The applicant states that the notice of appeal was filed on time, but the firm of Osundwa & Company Advocates delayed in obtaining certified copies of the proceedings which fact, the said firm of advocates has conceded to.
5. Mr. Said Juma, counsel for the applicant, depones that certified copies of the proceedings were issued on time and the delay was on their part.
6. He has urged the Court not to visit the mistakes and/or errors of an advocate upon an innocent litigant and that the applicant should not be denied her right to appeal.
7. In the replying affidavit, the deponent avers that the applicant has not satisfied the legal threshold to warrant the exercise of this Court's discretion to enlarge time for filing the record of appeal.
8. He states that the decree was extracted and made available to the parties within sixteen (16) days from the date of the judgment. Further, that certified copies of the proceedings and judgment were made available on 30th June 2025.
9. He contends that the delay in filing the record of appeal has not been satisfactorily explained and that the explanations given by

the applicant are inconsistent, as captured in the affidavit in support and on the face of the notice of motion.

10. The respondent has further contended that no sufficient or justifiable cause has been advanced to explain the delay, and that the alleged circumstances said to have occasioned the delay were not beyond the applicant's control as the proceedings were available by 30th June 2025. Similarly, that the decree was also ready by 22nd May 2025, and nothing prevented the applicant from lodging the record of appeal within the prescribed time.
11. The Court has considered the material before it and the submissions by the respondent.
12. The principles that a Court should consider in exercise of its discretion to extend time were set out by the Supreme Court in the case of **Nicholas Kiptoo Arap Salat vs. IEBC & 7 Others** (Supreme Court Application No. 16 of 2014) [2014] eKLR, which include:
 - a) The length of the delay;***
 - b) The delay is explained to the satisfaction of the Court;***
 - c) Whether there will be prejudice suffered by the respondent if the extension is granted;***
 - d) Whether the application is brought without undue delay; and***
 - e) Public interest, among others.***

13. The Court has noted that the explanation offered by the applicant for failure to file the record of appeal within time is not only insufficient but is also inconsistent. At paragraph 13 of the supporting affidavit, counsel attributes the delay to failure to obtain certified copies of the proceedings, but in paragraph 4 of the grounds in support of the application, the delay is attributed to awaiting the certified decree.
14. Further, the Court has noted that no correspondence has been exhibited demonstrating any effort to follow up on either the proceedings, or the decree after 30th June 2025, when the proceedings were certified. The period between that date and the filing of the present application in December 2025 has not been explained, and the letter dated 13th October 2025 seeking a certificate of delay was not uploaded on the Judiciary Case Tracking System.
15. Though the delay is attributed to the mistake on the part of the counsel, the Court in the case of **Bi-Mach Engineers Ltd vs. James Kahoru Mwangi [2011] eKLR** emphasized that delay must be satisfactorily explained and that, inaction by counsel in the absence of demonstrated follow-up does not automatically amount to excusable mistake. A litigant cannot invoke the Court's discretion while demonstrating prolonged inactivity and absence of diligence. Equity indeed aids the litigant, not the indolent.

16. The applicant has also failed to demonstrate that the intended appeal is arguable. She admitted having resigned in order to contest a political seat. The grounds do not disclose any serious arguable points of law.
17. In the premises, it is the finding of this Court that the application has no merit and the same is hereby dismissed with costs to the respondent.
18. It is so ordered.

Dated and delivered at Nairobi this 6th day of March 2026.

L. NJUGUNA

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

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

Signed

DEPUTY REGISTRAR