

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: OKELLO, JA. (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI E666 OF**

**2025 BETWEEN**

**ROSELINDA ADONGO OLWANDE.....APPLICANT**

**AND**

**OSCAR MAHAGAYU LIMOKE.....1<sup>ST</sup>  
RESPONDENT**

**PAWA IT SOLUTIONS.....2<sup>ND</sup>  
RESPONDENT**

*(An application to lodge an appeal out of time from the judgement of the Employment and Labour Relations Court of Kenya at Nairobi (Stella Ruto, J.) delivered on 19<sup>th</sup> September, 2025*

*in*

***ELRC Case No. E744 of 2023)***

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**R U L I N G**

1. By a Notice of Motion dated 10<sup>th</sup> November, 2025, the applicant, under certificate of urgency, has applied for extension of time to file the notice of appeal and lodge the appeal out of time against the judgement delivered on 19<sup>th</sup> September, 2025 in Nairobi ELRC No. E744 of 2023.
2. The matter was heard on 26<sup>th</sup> February, 2026 by way of

written submissions. The firm of Munyao-Kayugira & Co.  
Advocates is

on record for the Applicant while Munyao Muthama & Kashindi Advocates are on record for the Respondents. The Notice of Hearing was duly served.

3. The applicant's case is premised on the grounds stated on the face of the application and the supporting affidavit of the applicant herein.
4. From the grounds of the application and the supporting affidavit, the applicant's counsel attributes the delay in filing the notice of appeal and failure to file the record of appeal to the fact that the Respondents were not keen on proceeding with their intended appeal and thus denying the Applicant an opportunity to file her cross-appeal. The applicant deposed that she was dissatisfied with the judgement in Nairobi cause no. E744 of 2023 and was intent on challenging one aspect of the judgement to wit failure by the Court to award general damages. That she was intent on challenging this aspect of the judgement by way of cross appeal, the Respondents having filed Notice of Appeal indicating their intent to appeal against the decision of the superior Court.

5. She further deposed that when it became apparent that the Respondents were not keen on pursuing their appeal, the applicant then proceeded to file her own notice of appeal for which she is seeking leave to file her appeal out of time.
6. The application is opposed by the respondents. The 2<sup>nd</sup> respondent Oscar Mahagayu Limoke in his replying affidavit dated 19<sup>th</sup> November, 2025 deposed that the request for enlargement of time is misconceived and lacks merit and is brought to prejudice the Respondents after the Respondent settled the full decretal sum. The Respondents oppose the application on grounds that:
- (a) *The application for enlargement of time is misconceived, lacks merit, and is an afterthought;*
  - (b) *The Applicant filed her notice of appeal one month late without any sufficient or reasonable explanation for the delay;*
  - (c) *The Respondent's filing of a Notice of Appeal did not prevent the Applicant from filing her own within the 14-day period;*
  - (d) *That the applicant was actively threatening to pursue enforcement of the judgement, not an appeal;*
  - (e) *The Respondents settled the full decretal sum after the applicant rejected a payment plan and*

*the interim stay lapsed;*

(f) *The intended appeal is fatally defective.*

7. **Rule 4** of the Court of Appeal Rules provides:

*“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 of 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.”*

8. **Rule 4** of this Court’s rules gives a single judge an unfettered discretion and so long as the discretion is exercised judicially,

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Judge would be entitled to consider any other factor outside those listed so long as the factor is relevant to the issue since the principles enunciated before are not exhaustive.

9. The principles that guide this Court in determining whether to extend time pursuant to Rule 4 of the Rules of this Court are now well settle. The principles are well set out in **Mwangi v.**

**Kenya**

**Airways (2003) KLR 486 at page 489** as follows:

*“Over the years, the Court has set out guidelines on what a single judge should consider when dealing with an application for extension of time*

*under rule 4 of the rules. For instance, in **Leo Sila Mutiso v Rose Hellen Wangari Mwangi, (Civil Application No. Nai. 255 of 1997)**, the Court expressed itself thus: It is now well settled that the decision whether to extend the time is essentially discretionary. It is also well*

*settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted”.*

10. The principles enunciated are the principles I proceed to apply in the instant case in determining whether the prayers sought by the applicants in their Notice of Motion dated 10<sup>th</sup> November, 2025 should be granted. The applicants’ prayers are that the Honourable Court extend time and grant leave to allow the applicants file notice of appeal and the Record of Appeal out of time against the judgement dated 19<sup>th</sup> September, 2025 in Nairobi ELRC No. E744 of 2023, and that the notice of appeal dated 3<sup>rd</sup> November, 2025 be deemed as duly filed and further that the applicant be allowed to file the record of appeal out of time. The applicants further pray that the cost of this application abide the result of the intended appeal.

**11.** The first issue of consideration is the length of and reason for the delay. As to the length of the delay, the judgment was delivered on **19<sup>th</sup> September, 2025**, where upon the

Applicant had 14 days within which to file the notice of appeal  
i.e., **6<sup>th</sup> October,**

**2025.** The applicant filed the notice of appeal on **3<sup>rd</sup> November, 2025**, roughly 28 days outside the statutory timeline. In her supporting affidavit sworn and filed on **10<sup>th</sup> November, 2025** by the applicant, Roselinda Adongo Olwande deposed that the delay in filing the notice and record of appeal was attributed to the Respondents lack of interest in pursuing their appeal despite filing a notice of appeal. The Respondents had filed the notice of appeal on **24<sup>th</sup> September, 2025**, well within the statutory timeline and it's the Applicant's averment that she was advised by her lawyers to wait and file a cross-appeal instead of filing her own notice of appeal. Thus, it is the applicant's case that the delay was not inordinate because as soon as she discovered the disinterest in pursuing the appeal on the side of the Respondent, she proceeded to file her notice of appeal and further made this application for extension of time and that the delay is not inordinate.

12. The Respondent in opposing the application have deposed that the application is misconceived and is an afterthought. That the assertion by the Applicant that the Respondent's

Notice of Appeal dated **24<sup>th</sup> September, 2025** and request  
for typed proceedings

did not bar the Applicant from filing her notice of appeal. The Respondents further deposed that the notice of appeal dated **3<sup>rd</sup> November, 2025** is fatally defective for failure by the Applicant to serve the letter requesting typed proceedings upon the Respondent. The Respondent concludes by observing that following the Applicant's failure to serve the Respondents with a copy of the letter requesting typed proceedings, the Applicant ought to have filed the Appeal within sixty days pursuant to rule 82(1) of this Court's Rules. That the sixty days period for filing of an appeal lapsed on **18<sup>th</sup> November, 2025**.

13. The other criterion is the issue of the chances of the appeal succeeding. The application and supporting affidavit provide that the appeal has high chances of success as the High Court erred in finding that the Applicant had indeed suffered emotional and mental stress and still failed to grant her prayer for general damages for pain and suffering on the ground of a 'fair go-all round principle. The Respondent on the hand opines that the Applicant has failed to provide this Court with a memorandum of appeal or nay indication of specific

grounds and that in the absence of identified errors of law or principle, it is evident that

the intended appeal is not only speculative but is an attempt to re-litigate issues of quantum and enhance damages after judgment.

14. As to the degree of prejudice, the applicant deposed that the Respondents will not suffer any prejudice because there is no prejudice demonstrated that would be suffered by the Respondents if the appeal is allowed. To this end, the applicant invites the Court to consider the decision in **Said vs Shume (2023) KECA 292 (KLR)** where Odunga JA stated that:-

*“..in considering the exercise of discretion, the court must consider the risk of injustice if the court found in favour of the respondent, than if it determined this application in favour of the applicant and having considered that to opt for the lower than the higher risk of injustice...”.*

15. The Respondent on their part submitted that they will be prejudiced because they fully paid the decretal sum in reliance on the Applicant’s demand, legitimately believing that the matter had ended. The Respondent invited the court to consider the decision on **Maclean & Another vs Kiago & Another (2025) KEHC 3572 (KLR)**, where the court declined to enlarge time

where it found that the Respondents had taken steps towards enjoying the fruits of their judgement.

16. Having considered the application, the grounds in support of the application, the supporting affidavits, the responses, the submissions and the authorities cited and the law, this Court is now called upon to determine whether the application meets the threshold for enlargement of time.

17. On the first issue, as to the length of the delay, I find that the applicants slept on their writes. Considering that the applicant was dissatisfied with the appeal, they ought to have at least filed the notice and then bank on the Respondents notice and record of appeal to file a cross appeal if that was their intention. In the instant case, the applicant oblivious of the time running out for appeal, threatened the applicant with execution and ended up being paid the full decretal amount.

18. The jurisdictional importance of filing an appeal within the prescribed timelines was succinctly stated in **Nick Salat vs**

**Independent Electoral and  
Boundaries Commission & 7**

**Others (Application 16 of 2014) (2014) KESC 12 (KLR);**

the Supreme court remarked;

*“Time is a crucial component in dispensation of justice, hence the maxim: justice delayed is justice denied. It is a litigants’ legitimate expectation where they seek justice that the same will be dispensed timeously. Hence, the various constitutional and statutory provisions on time frames within which matters have to be heard and determined.”*

19. Taking into account the facts and circumstances of the case and the happenings therein, filing the notice of appeal thirty days after the judgement and after starting to enjoy the fruits of the judgement, amounts to inordinate delay bearing in mind that the draft notice of appeal was filed on **3<sup>rd</sup> November, 2025**, thirty days after the Judgement was delivered and after the decretal amount had been settled. There was therefore inordinate delay.
20. On the issue of reasons for the delay, the applicant submitted that she did not file her notice of appeal on time because the Respondent had filed a notice of appeal and that the Respondent later on failed to file the appeal.
21. **Rule 77** of the Rules of this Court provides:

*(1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be logged*

*in two copies, with the registrar of the superior court.*

*(2) Each notice under sub-rule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.*

22. **Rule 77 (1)** states in no uncertain terms that “*any person who desires to appeal to the Court shall give notice in writing...*” The Rule applies to a party to a proceeding who is dissatisfied with a decision and is desirous of appealing. In the instant case, the applicant states in her application and supporting affidavit that she was dissatisfied with aspects of the judgement. **Rule 77(3)** provides: “*each notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision and, where it is intended to appeal against a part only of the decision, shall—*

*(a) Specify the part complained of;...*”

23. The reason why we file a notice of appeal is to give the parties time to process the decision and make a definitive decision whether to appeal or not. The applicant ought to have exercised her right by giving notice of appeal as provided under **Rule 77** of the Rules of this Court. In any

event, **Rule 77(1)** is couched in mandatory terms and applies to any person, a category to which

the applicant belongs. Accordingly, the reason for the delay as presented by the applicant is not plausible.

24. On whether there are chances of success, I have to consider whether there is a single arguable ground that has been raised by the applicant. Having carefully considered the grounds set out in the motion and in my view, the appeal is arguable. An arguable point is not necessarily one that must succeed, but merely one that is deserving of consideration by the Court.

25. Finally, on the degree of prejudice, the Applicant submitted that the Respondent did not establish the prejudice that will be suffered. The Respondent on the other hand submitted that having settled the decretal sum in full, there was legitimate expectation that litigation had come to an end. To be fair to the Respondents, once they had settled the decretal amount, what is it that was left for them to appeal against? Nothing and by electing not to proceed with the appeal was well within their right. There was a legitimate expectation that litigation would come to an end. I therefore find that granting leave to file appeal out of time will prejudice the

Respondents.

26. I am persuaded that the applicant has not persuaded this Court that her application is deserving. This Court, therefore, finds no merit in the Notice of Motion dated 10<sup>th</sup> November, 2025. Accordingly, the Notice of Motion dated 10<sup>th</sup> November, 2025 is dismissed with costs.

**Dated and delivered at Nairobi this 6<sup>th</sup> day of March, 2026.**

**(DR.) J. O. OKELLO**

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

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

**Signed** \_

**DEPUTY**

**REGISTRAR**