

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**(CORAM: JAMILA MOHAMMED, J.A. (IN CHAMBERS))**

**CIVIL APPEAL (APPLICATION) NO. E400 OF 2025**

**BETWEEN**

**IRENE CHERONO.....APPLICANT**

**AND**

**THE KENYA POWER AND LIGHTING COMPANY LTD....RESPONDENT**

(Being an application for extension of time to file and serve the  
Record of Appeal out of time against the Judgment and Decree of the  
Employment and Labour Relations Court (D.K. Njagi Marete, J.)  
delivered on 29<sup>th</sup> January 2025

in

**ELRC Cause No. 284 of 2019)**

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**RULING**

**Background**

- 1) This is a Notice of Motion dated 3<sup>rd</sup> June 2025 expressed to be brought pursuant to **Sections 3A** and **3B** of the **Appellate Jurisdiction Act** and **Rule 4** of the **Court of Appeal Rules, 2022** (this Court's Rules).
- 2) The applicant seeks in the main extension of time to file and serve the Record of Appeal out of time against the judgment of the Employment and Labour Relations Court (ELRC) (**D.K. Njagi Marete, J.**) delivered

on 29<sup>th</sup>

January 2025; and that the Record of Appeal filed on 27<sup>th</sup> May 2025 be deemed as duly filed and served.

- 3) The discretion under **Rule 4** of this Court's Rules is wide and unfettered.

However, that discretion must be exercised judicially, upon settled principles, and in furtherance of justice.

- 4) The principles governing extension of time were settled in **Leo Sila Mutiso**

**v Rose Hellen Wangari Mwangi [1999] 2 EA 231 (CAK)** and reaffirmed

by the Supreme Court in **Nicholas Kiptoo Arap Korir Salat v IEBC & Z**

**others [2014] eKLR.**

- 5) In **Paul Wanjohi Mathenge v Duncan Gichane Mathenge Civil**

**Application No. Nai. 50 of 2010**), this Court reiterated that discretion is

to be exercised on reason, not sympathy. However, before the Court can exercise discretion, it must first be satisfied that there exists a competent appeal capable of being regularized.

- 6) The impugned judgment herein was delivered on **29<sup>th</sup> January 2025**.

The Notice of Appeal dated 3<sup>rd</sup> February 2025 indicates an intention to appeal against a judgment delivered on **31<sup>st</sup> January 2025**.

- 7) The question that arises is whether this discrepancy is a mere technical lapse curable under **Article 159(2)(d)** of the Constitution, or

whether it goes to the root of jurisdiction.

8) A Notice of Appeal is the jurisdictional foundation of an appeal. It is the

instrument that triggers the appellate jurisdiction of this Court. In **Abok**

**James Odera t/a A.J. Odera & Associates v John Patrick Machira t/a**

**Machira & Co. Advocates, Civil Appeal (Application) No. 161 of 1999**

(CAK), this Court held that a Notice of Appeal citing the wrong date of the impugned decision is incurably defective. That holding has consistently been applied as reflecting the principle that an appeal must clearly identify the judicial act being challenged.

9) In **Equity Bank Limited v West Link Mbo Limited [2013] KECA 320**

(KLR), this Court emphasized that without a valid Notice of Appeal,

there is no competent appeal before it. In **Mae Properties Limited**

**v Joseph**

**Kibe & another [2017] eKLR**, the Court reiterated that failure to properly

institute an appeal deprives the Court of jurisdiction. Further, the

Supreme Court in **WMM v EWG [2023] KESC 36 (KLR)** acknowledged

that

a Notice targeting a non-existent decision by citing the wrong date is

incurably defective.

10) The jurisprudential anchor of this principle remains **Owners of the**

**Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd [1989] KLR 1**, where it

was held that jurisdiction is everything and without it a court must

down its tools.

**11) Article 159(2)(d) of the Constitution** is not a panacea for jurisdictional defects. As cautioned in **Nicholas Kiptoo Arap Korir**

**Salat v IEBC & 7**

**others [2014] eKLR**, procedural rules are handmaidens of justice and not

obstacles but neither are they irrelevant.

12) The discrepancy in the date of the impugned judgment is not cosmetic; it identifies a different judicial determination. This Court cannot assume jurisdiction over a judgment not properly referenced in a valid Notice of Appeal. The defect is substantive and goes to the competence of the appeal.

13) In the absence of a Notice of Appeal referencing the judgment delivered on **29<sup>th</sup> January 2025**, there is no competent appeal capable of being validated through extension of time. Extension of time cannot issue in vacuo or in aid of a jurisdictionally defective foundation.

14) Consequently, notwithstanding any explanation for delay, the application is fatally defective.

15) The Notice of Motion dated 3<sup>rd</sup> June 2025 is hereby dismissed with costs to the respondent.

**Dated and delivered at Nairobi this 27<sup>th</sup> day of February, 2026.**

**JAMILA MOHAMMED**

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

I certify that this is  
a true copy of the  
original

Signed

**DEPUTY REGISTRAR**