



Bollore Africa Logistic Kenya Limited v Akuma & another (Appeal E119 of 2025) [2026] KEELRC 652 (KLR) (26 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 652 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E119 OF 2025
K OCHARO, J
FEBRUARY 26, 2026**

BETWEEN
BOLLORE AFRICA LOGISTIC KENYA LIMITED APPELLANT
AND
JAMES MOEGI AKUMA 1ST RESPONDENT
CAREER DIRECTIONS LIMITED 2ND RESPONDENT

RULING

Background

1. The Appellant, Bollore Africa Logistics Kenya Limited, filed the Memorandum of Appeal dated 3rd June, 2025. The appeal challenges the Judgment and decree of the Resident Magistrate, Hon. Noelyne Reuben, at Mombasa, delivered on 23rd April, 2025, in Msa ELRC MCCC NO. 217 OF 2018. Undeniably, the appeal was lodged outside of the requisite statutory period. The instant application flows from this fact of late filing.

Notice of Motion application dated 25th June, 2025

2. In the instant application, the Appellant seeks the following orders;
 - I. That this Honourable Court be pleased to grant orders for extension of time for the Applicant to file an appeal out of time.
 - II. That, subsequent to prayer (2) above, this Honourable Court be pleased to admit the Memorandum of appeal filed on 26th June 2025 and be it deemed to be properly on record.
 - III. That in the alternative, this Honourable Court be pleased to extend the time limited for filing of the Memorandum of Appeal herein and that it be deemed to be filed within the statutory time limit.



- IV. That costs be provided for.
3. In support of the application, the Applicant states that the Respondent sued it through MSA ELRC No. 217 of 2025 for wrongful and unfair termination, seeking compensation for the wrongful and unfair termination, payment for the days worked in the month of termination, a certificate of service, and costs. The Appellant defended the claim, denying that it was the Respondent's employer.
 4. Judgment was scheduled on several occasions and was eventually uploaded to the Case Tracking System without notice to the parties. The Applicant later discovered that judgment had been entered in favour of the Claimant. The trial Court found that the 1st Respondent was unfairly dismissed and ordered it to pay, inter alia, twelve months' gross salary as compensation for the unfair dismissal.
 5. Upon discovering the judgment, its Counsel prepared a Memorandum of Appeal and believed it had been filed by his office, only to later discover that the office file had been inadvertently filed away, without the memorandum of appeal being lodged in court. The discovery was made during routine file sorting.
 6. The Appellant contends that the failure to file the appeal within time was purely inadvertent and attributable to Counsel's mistake. An innocent litigant should not be penalised for that error. The intended appeal raises serious issues of law and fact, including that the trial Court made a determination on unpleaded issues, failed to properly evaluate the evidence, and awarded compensation in error.
 7. It is further argued that the 1st Respondent will suffer no prejudice and that it is in the interests of justice for the appeal to be heard on its merits.

The Opposition

8. The 1st Respondent opposed the application through a Notice of Preliminary Objection dated 28th October, 2025, and a replying affidavit that he swore on the 10th day of October 2025. The preliminary objection is predicated on this single ground:
 - I. That this appeal was filed without extension of the time prescribed for the filing of an appeal contrary to the provisions of rules 12 and 18 of the Employment and Labour Relations Court (Procedure) Rules.
9. By his replying affidavit, the 1st Respondent contends that the Applicant has not sufficiently explained the reason for the delay in filing the appeal.
10. The instant application is incompetent as it is anchored on an affidavit not sworn by the Applicant.
11. The 1st Respondent contends further that although the Applicant's Counsel has stated that he noticed that the Judgment had been entered on 25th May 2025, he has nevertheless not explained the inaction till 27th June 2025.
12. He further states that the instant appeal is a nullity ab initio for the reason that it was filed out of time without leave of the court.

Appellant's Submissions

13. The Appellant submits that the application dated 25/06/2025 seeks an extension of time to file an appeal out of time and to have the Memorandum of Appeal filed on 26/06/2025 deemed properly on record. The application arises from the Judgment in MSA ELRC No. 217 of 2025, which was uploaded to the Case Tracking System without prior notice to the parties.



14. The Appellant argues that although the judgment was scheduled for delivery on earlier dates, it was not issued as indicated, and follow-up letters to the registry went unanswered. It was only upon checking the system that Counsel discovered the judgment had been uploaded on 23/04/2025 without any notification.
15. Being aggrieved, the Appellant filed the Memorandum of Appeal together with the present application. It submits that this procedure is permissible under section 79G of the *Civil Procedure Act*, rule 18 of the Employment and Labour Relations Court Rules, 2024, and Order 50, rule 6 of the Civil Procedure Rules, which permit enlargement of time, including retrospective regularisation by filing an appeal contemporaneously with an application for leave. In support, the Appellant relies on Seneca East Africa Limited Vs. Mudaki (APPEAL E013 OF 2025) [2025] KEELRC 2884 (KLR) (16 October 2025).
16. Regarding the reason for the delay, the Appellant submits that it was solely occasioned by the Court's failure to notify the parties of the Judgment date. It argues that delivery without notice offended the principles of fair hearing and that parties are entitled to service of notices. In support of this position, reliance is placed on Nairobi ELRCA No. E210 of 2023; Peter Mathenge T/A Imperial Water Services vs. Juma (Employment and Labour Relations Appeal E210 of 2023) [2024] KEELRC 1753 (KLR), and Mombasa Court of Appeal Case No. 227 of 2015; Athuman Nusura Juma vs Afwa Nohamed Ramadhan [2016] KECA 395 (KLR).
17. Regarding whether the delay was inordinate, the Appellant submits that it discovered the Judgment on 25/05/2025 and filed the Memorandum of Appeal together with the application on 26/06/2025, approximately one month later. It contends that this period does not constitute inordinate delay and demonstrates prompt action upon discovery.
18. The Appellant argues further that the intended appeal raises serious and arguable grounds, including that the trial court decided issues not pleaded, disregarded evidence regarding the employment relationship, and awarded terminal dues without basis. It submits that unless the appeal is admitted, it will suffer irreparable prejudice, whereas the Respondent can be compensated by costs and will have the opportunity to respond to the appeal.

Analysis and Determination

19. It is important to, at this juncture, delve into considering the preliminary point raised by the 1st Respondent. Considering the architecture of the legal stipulations that provide for the extension of time, rightly cited by the Applicant, I hesitate not to conclude that the preliminary objection is not well anchored. This Court has previously held that it has discretion to grant an order extending the time for a document filed after the statutory deadline, thereby giving it retrospective validation.
20. Having held as I have hereinabove, I now turn to consider whether the application for extension of time should be granted. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* summed up the applicable considerations in the exercise of the authority to extend time as follows;
 - a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court.
 - b. A party that seeks an extension of time has the burden of laying a basis to the satisfaction of the Court;



- c. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis.
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay; and,
 - g. Whether, in certain cases, like the election petitions, public interest should be a consideration.
21. It is not that the trial Court did not deliver its judgment on the various appointed dates, and that when it was eventually delivered, it was, without notification to the Appellant's Counsel. At the time, Counsel was discovering that it had been delivered as such, the time for filing an appeal had lapsed.
22. The Appellant has explained the reason why the application for extension of time was not filed immediately; it was discovered that the judgment had been delivered without notification to its Counsel, Counsel's inadvertent mistake. I find the explanation sufficient. Being of the mind that Counsel's mistake shouldn't be visited on a litigant, I'd allow the instant application.
23. In the upshot, the Applicant's application for extension of time is hereby allowed. The memorandum of appeal herein filed is deemed duly filed and served.
24. The hearing of this appeal shall be fast-tracked.

READ SIGNED AND DELIVERED THIS 26TH DAY OF FEBRUARY 2026.

SIGNED

JUSTICE OCHARO KEBIRA

