



REPUBLIC OF KENYA



KENYA LAW
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**Kirinyaga Construction Limited v Samuel (Miscellaneous Application
E488 of 2025) [2026] KEELRC 571 (KLR) (17 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 571 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E488 OF 2025**

**SC RUTTO, J
FEBRUARY 17, 2026**

BETWEEN
KIRINYAGA CONSTRUCTION LIMITED APPLICANT
AND
WILSON MACHARIA SAMUEL RESPONDENT

RULING

1. What is before this Court for determination is a Notice of Motion dated 2nd December 2025 through which the Applicant seeks the following orders:
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of the intended appeal, there be a stay of execution of the judgment of the subordinate court in MCELRC No. E1996 of 2022.
 4. That this court be pleased to grant leave to file the intended appeal out of time and extend time within which the appeal should be filed.
 5. That the costs of this application be provided for.
2. The Application is premised on the grounds set out on its face and is supported by the Affidavit sworn by Robert Mwangi Maina, the Applicant's Administrator.
3. The Applicant avers that judgment in MCELRC No. E1996 of 2022, Wilson Macharia Samuel v Kirinyaga Construction Limited, was delivered on 24th September 2025 and that stay of execution was granted but lapsed on 23rd October 2025.



4. It is further averred that the Applicant was served with a Notice of Entry of Judgment issued on 29th October 2025, which expired on 4th November 2025, thereby exposing the Applicant to imminent execution against its property.
5. The Applicant further avers that on 27th November 2025, it was served with Warrants of Sale of Property together with a Proclamation Notice, both dated 27th November 2025, issued by the Respondent in execution of the decree herein.
6. The Respondent herein, Wilson Macharia Samuel, opposes the Motion through a Replying Affidavit dated 5th December 2025. Mr. Macharia avers that the present Motion seeking extension of time to appeal was only filed on 2nd December 2025, approximately two and a half months after delivery of judgment and well beyond the period of stay granted by the trial court.
7. He asserts that the Applicant has failed to offer any explanation, adequate or otherwise, for the inordinate delay in filing the intended appeal.
8. Mr. Macharia further avers that the Applicant's mere willingness to furnish security for the decretal sum does not amount to a legal justification for delay, nor does it constitute a basis for enlargement of time.
9. He maintains that the Applicant has been represented throughout by the same advocate who conducted the trial, making the assertion that they were unable to act in time untenable. In Mr. Macharia's view, the Applicant's silence and lack of explanation only confirm the absence of any valid reason for the delay.

Analysis and Determination

10. The sole issue for determination is whether the Applicant should be granted leave to file an appeal out of time.
11. Section 79G of the *Civil Procedure Act* prescribes the timelines for filing appeals from subordinate courts in the following terms:

[79G] Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

12. In terms of Section 95 of the *Civil Procedure Act*, the Court may, in its discretion, from time to time, enlarge any period which is fixed for the doing of any act prescribed or allowed by the Act, even though the period originally fixed or granted may have expired.
13. And further, Rule 80 of the Employment and Labour Relations Court (Procedure) Rules, 2024 states as follows regarding extension of time:

[80] The Court may, upon application or on its own motion, extend any time prescribed under these Rules or such time as may be stipulated in an order of the Court.

14. The foregoing statutory provisions make it clear that the Court exercises discretionary authority when determining an application for enlargement of time.



15. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, the Supreme Court set out the guiding principles applicable when a Court is called upon to exercise its discretion to extend time: -
 - 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 who seeks for 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 election petitions, public interest should be a consideration for extending time.
16. The record shows that the decision the Applicant intends to appeal from was delivered on 24th September 2025, whereas the present Notice of Motion was filed on 4th December 2025. This translates to an intervening period of approximately two months and ten days.
17. As was held by the Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others* (supra), the delay should be explained to the satisfaction of the Court.
18. In the present case, the Applicant has not provided any explanation for failing to file the appeal within the prescribed timelines. Consequently, the Court has no basis upon which to assess whether any such reasons, if offered, would have been plausible.
19. Accordingly, no credible or satisfactory reason has been demonstrated to justify the Applicant's failure to file the appeal in time.
20. It is trite that a party seeking the Court's exercise of discretion must present genuine and credible reasons, supported by evidence, to justify the delay. In the present case, the Applicant has manifestly failed to do so. This is underscored by the principle that an extension of time is not a matter of right but an equitable remedy granted at the Court's discretion to a deserving party.
21. In view of the foregoing, the Court concludes that the Applicant has not demonstrated any valid reason for the delay that would justify the exercise of its discretion to enlarge time for filing the intended appeal.
22. Ultimately, the Court finds that the Application filed on 2nd December 2025 lacks merit and is therefore dismissed, with no orders as to costs.

DATED, SIGNED and DELIVERED at NYERI this 17th day of February 2026.

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STELLA RUTTO
JUDGE



In the presence of:

Ms. Were instructed by Mr. Njenga for the Applicant

Ms. Njeru instructed by Mr. Gicheha for the Respondent

Ndati Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

