



**University of Nairobi v Orodó (Civil Application E533 of 2025)
[2026] KECA 401 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 401 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E533 OF 2025
JM NGUGI, JA
FEBRUARY 27, 2026**

BETWEEN

UNIVERSITY OF NAIROBI APPLICANT

AND

REUBEN ONDIGU ORODO RESPONDENT

(Being an Application for leave to file an Appeal against the Judgment of the Employment and Labour Court at Nairobi, (Nduma, J.) dated 5th October, 2023 in ELRC Cause No. 1191 of 2018)

RULING

1. Before me is the Notice of Motion dated 15th July, 2025 by which the Applicant seeks extension of time to file and serve a Record of Appeal against the judgment of the Employment and Labour Relations Court (Nduma, J.) delivered on 5th October, 2023. The application is expressed to be brought under Rule 4 of the [Court of Appeal Rules, 2022](#) and is supported by the affidavit sworn by the Applicant's Legal Officer, together with annexures, including a Draft Memorandum of Appeal and a Certificate of Delay.
2. The application is opposed. The Respondent filed a replying affidavit and written submissions contending, in substance, that the application is an afterthought; that there has been inordinate and unexplained delay; that the judgment of the trial court has already been satisfied; and that the intended appeal is neither arguable nor deserving of the Court's discretion.
3. I have considered the application, the affidavits on record, the rival written submissions, and the law.
4. On behalf of the Applicant, it is submitted that although the impugned judgment was delivered on 5th October, 2023 and a Notice of Appeal was lodged timeously, the Record of Appeal could not be filed earlier because certified copies of the proceedings were not ready until June, 2025. Reliance is placed on the Certificate of Delay issued by the Deputy Registrar of the Employment and Labour Relations



Court, which confirms that proceedings were applied for on 16th October, 2023, notified as ready on 21st May, 2025, paid for and collected on 9th June, 2025, and that the period taken by the court to prepare proceedings was 571 days.

5. The Applicant, therefore, contends that, once the excluded period under the Certificate of Delay is taken into account, the effective delay attributable to it is approximately twenty-five (25) days. That delay, it is argued, is satisfactorily explained by internal administrative processes within a large public university, including the need for internal consultations and approvals before giving instructions to lodge the appeal. Counsel urged that such delay is neither inordinate nor contumelious.
6. On arguability, the Applicant relies on the Draft Memorandum of Appeal annexed to the supporting affidavit. It is submitted that the intended appeal raises bona fide and weighty issues, including whether the learned trial Judge erred in interpreting the applicable Collective Bargaining Agreement on the computation of gratuity; whether gratuity ought to have been calculated at 31% of basic salary or at 28 days for each completed year of service; whether the Collective Bargaining Agreement was erroneously applied retrospectively; whether certain off-days had already been paid; and whether the learned Judge failed to consider relevant submissions, authorities, and binding precedent.
7. Finally, the Applicant submits that the fact that it has complied with the judgment by making payment does not render the intended appeal nugatory or moot. If the appeal succeeds, the Respondent would be obliged to refund any sums found not to have been lawfully payable. The Applicant contends that no specific prejudice has been demonstrated by the Respondent and urges the Court to lean in favour of substantive justice.
8. In response, the Respondent submits that the delay from October, 2023 to July, 2025 is inordinate and cannot be excused. According to the Respondent, internal administrative challenges are not a valid reason for delay, particularly for a public institution with legal capacity and representation. The Respondent further argues that the Applicant's payment of the decretal sum signifies acceptance of the judgment and militates against the grant of leave to appeal out of time.
9. The Respondent also contends that the intended appeal has no realistic prospects of success, asserting that the learned Judge correctly interpreted the Collective Bargaining Agreement and properly awarded gratuity and other dues. On that basis, the Respondent urges the Court to decline the invitation to exercise its discretion in favour of the Applicant.
10. The discretion I am invited to exercise is conferred by Rule 4 of the *Court of Appeal Rules*, which 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.”
11. The Rule itself does not enumerate the factors to be considered. However, the principles guiding the exercise of this discretion are now well settled. In *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231, this Court stated:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. In general, the matters which this Court takes into account are the



length of the delay, the reason for the delay, the chances of the appeal succeeding (possibly), and the degree of prejudice to the respondent.”

12. These principles have been consistently reaffirmed, including by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, which emphasized that extension of time is an equitable remedy to be granted on a case-by-case basis, guided by the interests of justice.
13. Turning first to the length and explanation of the delay, the Certificate of Delay is critical. It confirms that although proceedings were applied for shortly after delivery of the judgment, they were not ready for collection until 21st May, 2025 and were in fact collected on 9th June, 2025. The period of 571 days taken by the court to prepare proceedings is, by law, excluded from the computation of time.
14. Once that excluded period is taken into account, the delay attributable to the Applicant after collection of proceedings and before filing the present application is approximately twenty-five (25) days. In the context of Rule 4 jurisprudence, such a delay is modest. The explanation proffered — internal administrative processes and approvals within a public university — while not ideal, is not implausible and does not disclose indolence, bad faith, or an intention to obstruct the course of justice.
15. On arguability, I remind myself that at this stage the Court does not conduct a mini-appeal or determine the merits. It suffices if the intended appeal raises at least one bona fide point deserving of consideration. The Draft Memorandum of Appeal raises several such points, including the proper interpretation of the Collective Bargaining Agreement on gratuity, the question of retrospective application, alleged double payment of off-days, and the treatment of submissions and precedent by the trial court. These are not frivolous issues and are plainly arguable.
16. As regards prejudice, the Respondent argued that the judgment has already been satisfied. However, it is trite that compliance with a judgment does not, without more, render an appeal moot. If the intended appeal were to succeed, the law provides mechanisms for restitution. The Respondent has not demonstrated any specific prejudice that cannot be compensated by costs.
17. Balancing all the relevant factors - the relatively short effective delay; the explanation offered; the arguable nature of the intended appeal; and the absence of demonstrated prejudice - I am persuaded that this is an appropriate case for the exercise of discretion in favour of the Applicant.
18. In the result, the Notice of Motion dated 15th July, 2025 is allowed. The Applicant shall file and serve its Record of Appeal within fourteen (14) days from the date hereof.
19. The costs of this application shall abide the outcome of the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2026.

JOEL NGUGI

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

