

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
MISCELLANEOUS APPLICATION NO. E145 OF 2025
KENYA CONFERENCE OF CATHOLIC BISHOPS TRADING
AS RADIO WAUMINI.....1ST APPLICANT/INTENDED
APPELLANT
CONFERENCE OF CATHOLIC BISHOPS.....2ND
APPLICANT/INTENDED APPELLANT
VER
NEPHAT MWANGI
RESPONDENT

(Before Hon. Justice Abuodho O. O. Nelson)

RULING

1. The Applicants filed application dated 28th January 2025 brought under *Sections 1A, 1B, 3A, 78, 79C of the Civil Procedure Act, Order 42, Order 50 Rule 5, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Article 159(2) (b) of the Constitution of Kenya 2010.*
2. The Applicants sought among the specific reliefs to stay an order that this court grants the Applicants leave to file an appeal out

of time against the Ruling in MCELRC NO. E600 of 2024 delivered by Hon. Patrick Olenko on 14th March, 2025.

3. The application was supported by the grounds set on the face of this Application herein and the Affidavit of **ROSALINE MBINYA MUEMA** the Human Resource Manager of the 1st Applicant who averred that:

a. The Respondent filed MCELRC E600/2024 via statement of case dated 12th February, 2024 against the Applicants before Kisumu Chief Magistrates Court Employment and Labor Relations Court.

b. In response to the Applicants filed a Preliminary Objection dated 12th June 2024 and on 14th March 2025 Hon. Patrick Olenko delivered the Ruling and dismissed the Applicants' Preliminary Objection dated 12th June 2024. The Court granted the Applicants to appeal against the Ruling and directed the parties to furnish a copy of the Ruling from the Court Tracking System.

c. The Applicants being dissatisfied with the Ruling in MCELRC E600/2024, they intended to appeal the same.

d. A copy of the Ruling was only availed on the Court Tracking System on the 3rd April 2025 however the advocate who had personal copy of the matter was taken ill on 1st April, 2025 and admitted to hospital until 5th April 2025. Thereafter the advocate was out of the office on sick leave recuperating during the month of April 2025. Therefore, by the time the advocate recovered and

returned to office in the month of May 2025, the time within which to file the appeal had already lapsed.

e. The Applicants stand to be prejudiced if the leave is not granted to them to file an appeal out of time as this will deny them an opportunity to have their case relooked at by a superior court to ascertain on whether or not the Honourable court erred in determining the Preliminary Objection.

f. The Applicants have an arguable appeal.

g. The application has been filed within a reasonable period of time.

4. In reply the Respondent filed a supporting Affidavit sworn on 26th September 2025 by the Respondent herein who opposed the Applicants' Application who has averred that:-

a. No credible or sufficient evidence or sufficient documentation has been provided to demonstrate that the advocate's illness actually impeded compliance with the timelines.

b. Even with the illness of Advocate Winnie, the Applicant's actual Counsel on record was Mr. Wasike Advocate, as Advocate Winnie has already held his brief and therefore in the absence of Ms Winnie he could have made necessary arrangement to file the appeal, but the Applicant failed to act diligently thereby showing clear negligence and lack of seriousness in filing the appeal.

c. The excuse tendered is an afterthought only raised when the delay was questioned and it does not constitute a sufficient reason for enlargement of time under the law.

d. Allowing the defendant to file out of time will greatly prejudice the Respondent, as it will cause unnecessary

delay in the determination of this matter and deny him the right to expeditious justice under article 159(2)b of the Constitution.

e. Litigation must come to an end, and parties cannot be allowed to intentionally flout clear procedural rules and then seek refuge in false excuses.

f. The Application is for striking out as it is supported by non-compliant affidavits which are incomplete and therefore no evidence has been enabled in support of the same.

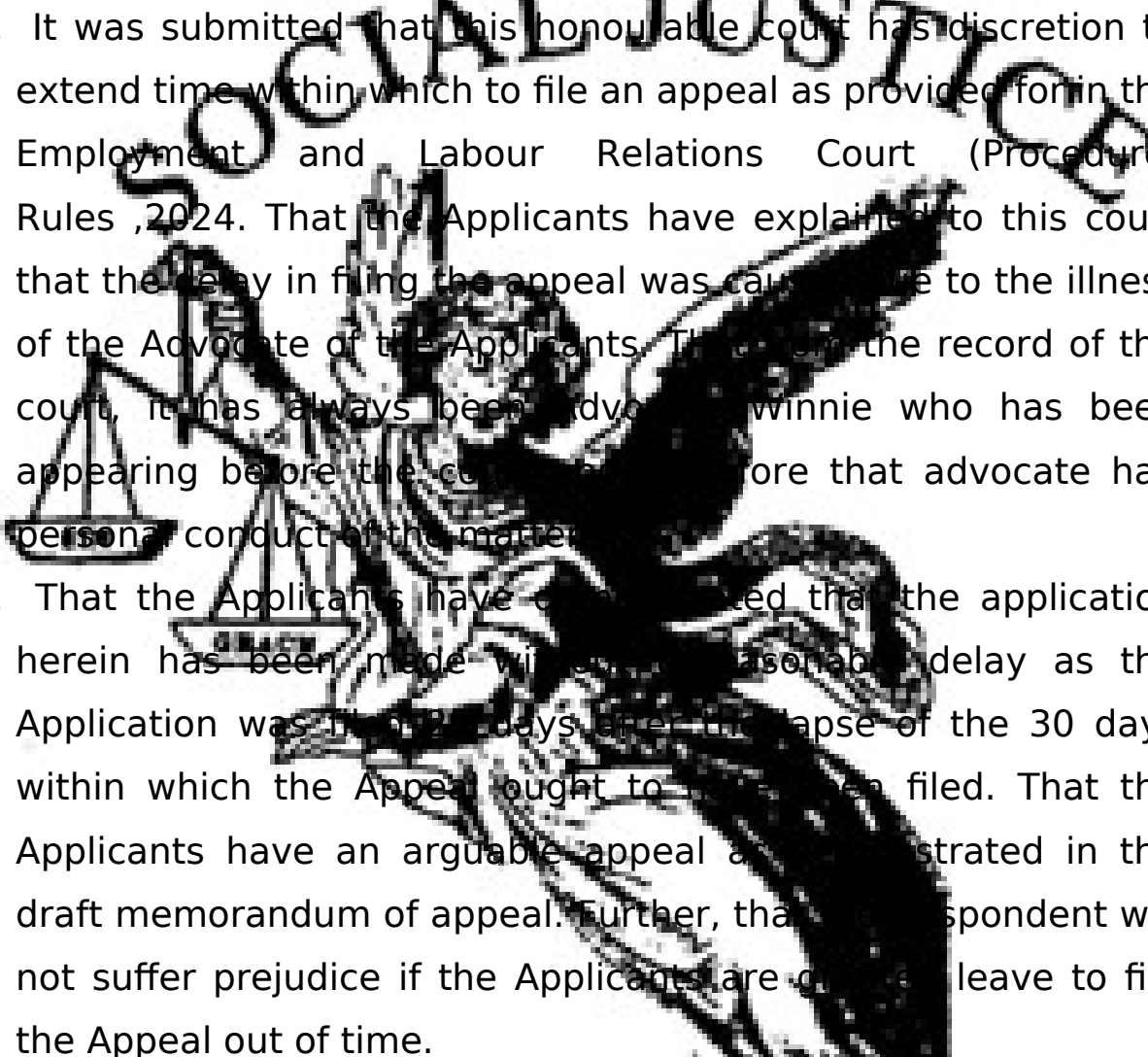
g. The application is not well-pleaded, lacks merit and is an abuse of the court process and ought to be dismissed with costs.

5. The Application was disposed of on written submissions.

APPLICANTS' SUBMISSIONS

6. The Applicants through their Advocates NEW Advocates LLP filed submissions dated 11th December 2024 and on the issue of whether the Applicants should be granted leave to file the Appeal out of time counsel relied on Rule 6 of the Employment and Labour Relations Court (Procedure) Rules 2024 which allows for the extension of time to file appeals. Counsel further relied on the case of **Wambugu & another v Wwangi (Civil Application E124 of 2025) [2025] KEA 687 (KLR) (15 October 2025) (Ruling)**, on the principles to be applied in an application to extend time to file an appeal out of time that is first, the length of the delay; second, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding

if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.

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7. It was submitted that this honourable court has discretion to extend time within which to file an appeal as provided for in the Employment and Labour Relations Court (Procedure) Rules, 2024. That the Applicants have explained to this court that the delay in filing the appeal was caused due to the illness of the Advocate of the Applicants. That on the record of the court, it has always been Advocate Winnie who has been appearing before the court and before that advocate had personal conduct of the matter.
8. That the Applicants have also stated that the application herein has been made within a reasonable delay as the Application was filed 12 days after the lapse of the 30 days within which the Appeal ought to have been filed. That the Applicants have an arguable appeal as demonstrated in the draft memorandum of appeal. Further, that the Respondent will not suffer prejudice if the Applicants are given leave to file the Appeal out of time.

RESPONDENT'S SUBMISSIONS

9. The Respondent through his advocates George & Sang Company Advocates filed written submissions dated 21st October, 2025 and on the issue of whether the Applicant demonstrated satisfactory reasons for delay in filing the appeal counsel submitted that it was trite law that if an applicant has

offered valid and candid reasons for the delay in taking an action prescribed by statute, then court's discretion should be exercised in favour of such an applicant; however, if the grounds are revealed to be not candid and satisfactory, then the extension of time being an equitable remedy should be available to such an applicant.

10. Counsel relied on the case of **Rombos & Murunga & 7 others (CIVIL Application E002 of 2025) [2025] KECA 1645 (CLR)** where the Court of Appeal dismissed an application for not meeting the principles set out to extend time to file appeal out of time as the delay was inordinate and not explained.

11. It was submitted that in the instant case, the Applicant explained that his lawyer was taken ill, and even though such is a justifiable reason, a closer review of the facts and dates given reveals that the same is not candid and satisfactory.

DETERMINATION

12. This court has fully considered the Applicant's the Replying Affidavit by the Respondent and both parties' submissions together with the authorities relied upon in making the final determination in this matter and observes that the applicable Rule in applications of this nature is Rule 18 of ELRC (Procedure) Rules, 2024 which is the guiding law in answering the question whether the prayer to enlarge time to file the

appeal is merited. In **Charles N. Ngugi v ASL Credit Limited [2022] eKLR** the court held as follows:-

However, the intended appeal ought to have already been filed before or together with an application seeking leave to extend time for filing an appeal.

13. The Supreme Court in the case of **Nicholas Kiptoo Korir Arap Sait v IEBC and 7 Others [2019] eKLR** enunciated the principle applicable in an application for leave to appeal out of time. The Court stated inter alia that:

“(T)he underlying principle that the court should consider in exercise of such discretion is as follows:-

- 1. Extension of time is a remedy of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;*
- 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;*
- 3. Whether the court should exercise its discretion to extend time, is a consideration to be made on a case-to-case basis;*
- 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;*
- 5. Whether there will be any prejudice suffered by the Respondent if the extension is granted;*
- 6. Whether the application has been brought without undue delay.*
- 7.*

14. In this particular case the application has been filed with a draft Memorandum of Appeal. The Ruling in this matter was delivered on 14th March, 2025. The Applicants claimed that the ruling was uploaded to the CTS on 3rd April, 2025 although there was no evidence by the Applicants requesting to be furnished with the ruling before then. The Advocate who was in conduct of the matter Ms. Mwanje was taken ill on 1st April, 2025, discharged on 10th April, 2025 and thereafter proceeded on sick leave. She returned to work in May, 2025 and the application herein filed on 23rd April, 2025, 23 days after the 30 days lapsed on 13th April, 2025.

15. The court finds that the reason of the Advocate's sickness was justifiable reason, the record shows that she was the one holding brief for Mr. Wasike in the matter, she was the one in conduct of the matter and the time of delay of 23 days was not inordinate since it has been explained. In the interest of justice coupled with the right to be heard under Article 50 of the Constitution and the same to be heard without undue regard to technicalities under article 159(2) of the Constitution, this court finds basis to pardon the Applicants.

16. The court also has had a chance to look at the draft Memorandum of Appeal and it raises serious triable issues most specifically on time limitations. On the prejudice to be suffered by the Respondent this court notes that the same need to be balanced with the interests of the Applicants who have met the conditions to file the application of time and the same can be compensated by an award of costs. The Applicants have therefore shown principles for extension of time for filing the appeal. The application is therefore found with merit and is allowed.

17. In the upshot, the court makes the following orders:

- a. **The Notice of Motion for extension of time dated 21st January 2025 is merited and is allowed.**
- b. **The Appellants to file a substantive appeal within 21 days.**
- c. **Costs shall be in the appellant's favour.**

18. **It is so ordered.**

Dated at Nairobi this 13th day of March 2026

Delivered virtually this 13th day of March 2026

Abuodha Nelson Jorum

Presiding Judge- Appeals Division

