

**IN THE COURT OF  
APPEAL AT NAIROBI**

**(CORAM: OKONG'O J.A (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI E759 OF**

**2025 BETWEEN**

**ROY NOAH MUGANDA.....APPLICANT**

**AND**

**KEL CHEMICALS LIMITED RESPONDENT**

**out of time in an intended appeal from the Judgment of the Employment and Labour Relations  
in**

**ELRCA No. E188 of 2024)**

**\*\*\*\*\***

**RULING**

**1. On 13<sup>th</sup> November 2025, the Employment and Labour**

**Relations Court (superior court) delivered a judgment in  
ELRCA No. E188 of 2024, Kel Chemicals Limited v. Roy Noah M**

appellant and the applicant, the respondent. The judgment was against the applicant. The applicant was dissatisfied with the judgment but did not file a notice of appeal against the same within the prescribed period. The applicant has now

brought an application dated 17<sup>th</sup> December 2025,  
seeking

an extension of time to file a notice of appeal. The application, which is brought under **Rule 4** of the Court of **Appeal Rules (the Rules)**, is supported by the affidavits of the applicant and his advocate, Leonard Samson Opundo, both sworn on 17<sup>th</sup> December 2025, and a further affidavit of the applicant sworn on 6<sup>th</sup> February 2026. The applicant has contended that the judgment of the superior court was delivered without notice to the parties, and that he did not learn of it until 10<sup>th</sup> December 2025, when he immediately instructed his advocates to lodge an appeal against the same. The applicant has contended that the delay in filing the notice of appeal within the prescribed time was occasioned by the fact that his advocates were not notified of the date for the delivery of the judgment, which was to be delivered on 25<sup>th</sup> July 2025, but was not delivered because the court was not sitting. The applicant has averred that his intended appeal has good chances of success and that the application before the court has been brought without unreasonable delay. The applicant has annexed to his affidavit in support of the application the letters addressed to the superior court inquiring about the date of delivery of the judgment, the draft memorandum

of

appeal, the Notice of Appeal, and a letter requesting for typed proceedings.

2. The application is opposed by the respondent through a replying affidavit sworn by Timothy Nthiga Rop on 3<sup>rd</sup> February 2026. The respondent has contended that there is no requirement for the parties to be present during the delivery of judgments in the superior court. The respondent has averred that, under Rule 68(5) of the Employment and Labour Relations Court (Procedure) Rules, 2024, decisions of the court can be delivered electronically, virtually, or in open court. The respondent has averred that if the applicant had followed up the judgment with the court, he would have known of the date of its delivery.
3. The respondent has averred that the judgment was delivered and uploaded in the judiciary e-filing system on 13<sup>th</sup> November 2025, and by the time the applicant's advocates were writing letters inquiring about the judgment, the same was readily available. The respondent has averred that there is no reasonable or plausible cause to warrant the exercise of the court's discretion in favour of the applicant.

4. The applicant has filed submissions dated 6<sup>th</sup> February 2026.

I have not seen any submissions from the respondent on record. I have considered the applicant's application together with the affidavits filed in support thereof. I have also considered the respondent's replying affidavit. Finally, I have considered the applicant's written submissions.

Rule 4 of the Rules provides as follows:

**"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 a superior court, for the doing of any act authorized or required by the 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."**

5. In the case of **Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 Others** [2014] eKLR, the Supreme Court laid out the following general principles on applications for extension of time:

***"From the above case law, it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant..., we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:***

**1. 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;***

***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 the 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 respondents if the extension is granted;***

***6. Whether the application has been brought without undue delay; and***

***7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time. "***

6. The respondent has not rebutted the applicant's claim that the judgment of the superior court was to be delivered on 25<sup>th</sup> July 2025, but the same was not delivered because the court was not sitting. The respondent has also not rebutted the applicant's contention that the parties were not notified of any other date for the delivery of the impugned judgment. From the evidence on record, I agree with the applicant that the judgment of the superior court was delivered without notice to the parties. I am of the view that the respondent has misapprehended the purport

and effect of **Rule 68(5)** of the

**Employment and Labour Relations Court (Procedure)**

**Rules, 2024**, which empowers the superior court to deliver its decisions electronically, virtually, or in open court. The Rule does not permit the court to deliver its decisions without notice to the parties.

7. I have perused a copy of the superior court's judgment annexed to the affidavit in support of the application. The judgment is not dated. It is therefore not clear when it was delivered. It can only be assumed that it was delivered on 13<sup>th</sup> November 2025, the date it was uploaded to the Judiciary Case Tracking System. The applicant's contention that the judgment of the superior court was delivered on 13<sup>th</sup> November 2025 without notice and in the absence of his advocates is not disputed.
8. I am satisfied that the applicant has given a reasonable explanation for his failure to file a notice of appeal within the prescribed time. The Applicant has also demonstrated that he was diligent in seeking to know the date of the delivery of the impugned judgment, and that he brought this application soon after he learnt that the judgment had been delivered on 13<sup>th</sup> November 2025. Under Rule 77 of the Rules, the Applicant should have filed a notice of appeal by 27<sup>th</sup>

November 2025. The present application was filed on 17<sup>th</sup> December 2025, 20 days after the expiry of the time within which the notice of appeal should have been filed. The application before the court was therefore not filed after an unreasonable delay.

9. Rule 4 of the Rules gives this court unfettered discretion to grant an extension of time. That discretion must be exercised judiciously. The applicant had a duty to lay a proper basis for the order sought. I am satisfied that the applicant has given a reasonable explanation for the delay in filing the notice of appeal. The delay was caused by the court's failure to notify the applicant of the date for the delivery of the impugned judgment.
10. The upshot of the foregoing is that the application before me has merit. The same is allowed. The applicant shall file the notice of appeal within 14 days from the date hereof.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of March 2026.**

**S. OKONG'O**

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

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

***Signed***

**DEPUTY REGISTRAR.**