



**Meyo v Board of Governors Tom Mboya Labour College & another (Civil Application E101 of 2021) [2026] KECA 583 (KLR) (9 March 2026) (Ruling)**

Neutral citation: [2026] KECA 583 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E101 OF 2021  
MS ASIKE-MAKHANDIA, JA  
MARCH 9, 2026**

**BETWEEN**

**ROSEMARY MEYO ..... APPLICANT**

**AND**

**BOARD OF GOVERNORS TOM MBOYA LABOUR COLLEGE .... 1<sup>ST</sup>  
RESPONDENT**

**CENTRAL ORGANIZATION OF TRADE UNIONS ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for extension of time to appeal against the Judgment and decree of the Employment & Labour Relations Court at Kisumu, (Radido, J.) dated 26th May, 2021 in ELRC Cause No. 422 of 2015)*

**RULING**

1. Rosemary Meyo, “the applicant”, moved this Court by way of a Motion on Notice seeking orders that: this Court be pleased to extend time for filing a Notice of Appeal against the Judgment and decree of the Employment and Labour Relations Court sitting in Kisumu dated 26th day of May, 2021; the Notice of Appeal attached to the application be deemed as properly filed and served upon payment of the requisite filing fees; the Court do extend time within which the Notice of Appeal and the letter bespeaking proceedings should be served on the respondents; and that costs of the application be in the cause.
2. It is the case of the applicant, that she was unable to instruct her counsel to file the Notice of appeal on time as she was out of the country and specifically in the USA, since December 2021 and that it therefore became a challenge to give instructions to counsel and whom by her own admission, she had lost touch with. That she only became aware of the judgment and decree on 28th May 2021. That she then sought the services of her current counsel who advised her that time limited for the filing of the notice of appeal had long expired. That it is then that she expeditiously filed the instant application.



That if this application is not allowed, she will have been unfairly driven from the seat of justice. That the intended appeal is arguable and the respondents will suffer no prejudice if the application is allowed.

3. Upon service of the application on the Respondents, they filed their Replying Affidavit sworn on 10th August, 2021 by Francis Atwoli, the secretary General of the 2<sup>nd</sup> respondent opposing the application. In essence Mr Atwoli deposes that the applicant is being less than candid in her assertions and has therefore come to this court with dirty hands though seeking an equitable remedy. For instance, how could the applicant have known about the judgment whilst in the USA when at the time he had allegedly lost contact or touch with her previous advocates. Further that the applicant had not placed before this Court evidence documentary or otherwise evincing her efforts to reach out to her previous advocates. Finally, that the applicant had not demonstrated vigilance in the prosecution of her intended appeal, if at all.
4. The application was canvassed by way of written submissions only and without appearance of counsel. The respective submissions merely reiterated and expounded on what I have already set out herein above and I therefore need not rehash.
5. In my view, the issue for determination is whether the applicant has met the threshold for extension of time to file a Notice of appeal out of time as well as letter bespeaking proceedings. It is trite law that the power of this Court to extend time is discretionary within the meaning of Rule 4 of the Court of Appeal Rules which provides interlia:

“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.”
6. The considerations that guide the Court in this respect have long been settled. For instance, in *Fakir Mohamed v. Joseph Mugambi & 2 Others*, CA No. Nai. 332 of 2004, the court listed such considerations to include, among others:
  - a. the length of delay;
  - b. the reason for the delay;
  - c. the chances of the appeal succeeding if the application is granted;
  - d. and the degree of prejudice to the respondent if the application is granted.
7. It is not in dispute that the judgment and decree, the subject of this application was delivered on 26 the May, 2021 and the instant application was filed on 6<sup>th</sup> July, 2021 which is a delay of about 42 days.
8. It is also not lost on me that the judgment and decree was in favour of the applicant. Indeed, whilst this application was pending hearing, the applicant moved and executed the judgment and decree. Why did the applicant conceal this fact to court! Though the issue was brought out in the submissions of the respondents, the applicant has had absolutely no response demonstrating her lack of candour which a court of equity obviously frowns upon.
9. The applicant indicates that she engaged her previous Advocates who were allegedly non-committal on whether she Could file an Appeal or not and thereafter she allegedly lost touch with. However, she has not attached any evidence to back up this allegation.



10. It does appear to me therefore that no sufficient explanation has been adduced to demonstrate that the delay was not intentional given that even the purported passport entries attached to the application indicate that the applicant's Visa was valid until 17th June, 2020 a year earlier. Moreover, no evidence has been attached showing the date of her entry in the USA. No doubt that counsel for respondents has asserted and correctly so, in my view that the applicant has approached this Court with falsehoods and is not deserving of any orders from the Court.

11. Given all the foregoing, I would dismiss the application with costs to the respondents.

**DATED AND DELIVERED AT KISUMU THIS 9<sup>TH</sup> DAY OF MARCH, 2026.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

