

**IN THE COURT OF
APPEAL AT KISUMU**

**(CORAM: OMONDI, JA (IN
CHAMBERS)) CIVIL APPLICATION**

NO. E143 OF 2025 BETWEEN

PRITTY ALUMASA.....APPLICANT

AND

**COUNTY PUBLIC SERVICE BOARD.....1ST RESPONDENT
COUNTY GOVERNMENT OF VIHIGA 2ND
RESPONDENT**

*(Being an application for extension of time to file and
serve a notice of appeal against the ruling of the
Employment and Labour Relations Court at Kisumu
(Gakeri, J.) dated 2nd October 2025*

in

Cause No. Cause No. E062 of 2025)

RULING

1. By a Notice of Motion dated 21st October, 2025, and a supporting affidavit of even date, sworn by Pritty Alumasa, the applicant, seeks orders to extend time within which the to file and serve a Notice of Appeal against the ruling of the Employment and Labour Relations Court at Kisumu delivered on the 2nd Day of October 2025 (Dr. Gakeri, J.) in ELRC Cause No.E062 of 2025; that the Notice of Appeal

annexed hereto to

be deemed as duly filed and filed and served upon payment of the requisite Court fees.

2. The applicant instituted a claim alleging unlawful termination of employment by the respondent. He prayed for a declaration that termination of employment was unlawful, malicious and unprocedural, unpaid house allowance, general damages, unpaid salary and interest on the amount awarded. On 2nd October 2025, the trial court dismissed the claim in the following terms:

***“...Having failed to demonstrate that the appellate process prescribed by the County Government's Act and the Public Service Commission Act had been invoked, it is clear that the claimant has failed to prove that the internal dispute resolution mechanisms had been exhausted as by law required, before this court's jurisdiction was invoked. Flowing from the foregoing, it is discernible that the instant suit was instituted prematurely. In the circumstances, the respondent's Notice of Preliminary Objection dated 29th July, 2025 has merit. Consequently, the claimant's Memorandum of Claim dated 18th July, 2025 ... and the Notice of Motion of even date are hereby struck out with no Orders as to costs.*”**

3. The applicant was aggrieved and desired to contest this outcome by way of appeal. However, the statutory period of fourteen (14) days prescribed for filing a Notice of Appeal had since lapsed. The applicant explains that the delay in filing the

Notice of Appeal was inadvertent and not deliberate, but was occasioned by the applicant's lack of funds to immediately instruct counsel on the appeal since he is unemployed and the long holiday period that had prevailed in the entire country from 16th October until 20th October 2025; that the intended appeal is arguable and raises triable issues with a high likelihood of success; and no prejudice shall be suffered by the respondents if this application allowed.

4. Drawing from the case of **Nicholas Kiptoo Arap Korir vs IEBC & 7 Others [2014] eKLR**, which sets out the guiding principles for extension of time, the applicant submits that the delay in filing the Notice of Appeal was inadvertent and not deliberate, occasioned by his lack of funds to immediately instruct counsel on the appeal since he has been unemployed; and that the entire country was on a long holiday period from 16th October until 20th October 2025
5. It is also contended that he intended Appeal raises weighty and arguable issues, including important questions of law and fact regarding wrongful striking out of the claim, denial of fair hearing and misapplication of the Employment law.

This shows that the Appeal not only has a high chance of success

but also raises a bona fide issue worthy of the Court's consideration

6. The applicant also argues that the respondent stands to suffer no prejudice that cannot be compensated by costs; but the applicant stands to suffer irreparable loss if denied the opportunity to pursue the intended appeal.
7. The respondent has not filed any response either by way of a replying affidavit or written submissions.
8. Rule 4 of the Court of Appeal Rules, 2022 provides that:

"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."

9. The power to extend time is discretionary and unfettered, though it must be exercised judiciously and not capriciously as was aptly set out in **Paul Wanjohi Mathane vs. Duncan Gichare Mathenge [2013] eKLR** this Court held thus:

"The discretion under Rule 4 is unfettered, but it has to be exercised judiciously, not on whim, sympathy or caprice. I take not that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the

application is granted, and whether the matter raises issues of public importance.”

10. The delay in this instance is less than a month, the applicant has explained that the reason for the delay was his financial situation which inhibited him from acting in a timely fashion. This explanation is plausible, bearing in mind that the contested decision actually related to his loss of employment; and the delay is not inordinate; and no prejudice is occasioned to the respondent as it will have its day in court on appeal. I am persuaded that the applicant is deserving of the orders sought.

11. Consequently, the applicant is granted extension of time to lodge and serve the notice of appeal. The same shall be filed and served within fourteen (14) days of today's date. There shall be no orders as to costs.

Dated and delivered at Kisumu this 31st day of March, 2026.

H. A. OMONDI

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR