

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: MUSINGA (P) (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI E070 OF 2025**

**BETWEEN**

**FRACHT KENYA LIMITED.....APPLICANT**

**AND**

**IRENE WAMBUI KALOKI.....RESPONDENT**

*(Being an application for enlargement of time, and leave to file a notice of appeal, record of appeal and memorandum of appeal out of time against the Judgment of the Employment and Labour Relations Court at Nairobi (**Stella Rutto, J.**) delivered on 10<sup>th</sup> November 2023*

***in***

***(ELRC Cause No. E043 of 2022)***

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

**RULING**

1. The applicant's notice of motion dated 7<sup>th</sup> February 2025 seeks enlargement of time and leave to file a notice of appeal, a record of appeal, and a memorandum of appeal out of time in respect of the judgment of **Stella Rutto, J.** dated 10<sup>th</sup> November 2023 in Nairobi Employment and Labour Relations Court (**ELRC**) **Cause No. E043 of 2022.**
2. The applicant's affidavit in support of the application is sworn

by **Joram Nyanzi**, whose status or position is not indicated.

Joram states that the trial court in its aforesaid judgment in favour of the respondent, held that the respondent's termination of employment was unfair and awarded her special damages totalling to USD 63,950. The applicant, being aggrieved by the judgment, intends to file an appeal, and states that there has been considerable challenges in obtaining certified copies of the typed proceedings. There was also sudden change of counsel for the applicant that resulted in the discovery of missed timelines constituting the appeal.

3. The deponent further states that the applicant is willing to furnish "security for costs equal to the contested decretal sum" in the sum of USD 30,308.10 as awarded in the trial court's judgment or as this Court may deem appropriate.
4. The respondent did not file any response to the said application, despite service of a hearing notice dated 2<sup>nd</sup> March 2026.
5. The applicant filed submissions dated 24<sup>th</sup> February 2025 which I have considered. In an application of this nature, the Court exercises its unfettered discretion in a judicial manner, and the factors it takes into consideration in the exercise of that discretion have been set out in a plethora of this

Court's decisions, including **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi** [1999] 2EA 331.

6. The Supreme Court has also pronounced itself on the issue in **Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others** [2014] eKLR. From the said decision, it is discernible that a party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court, and the Court has to consider whether there is reason for the delay, which delay should be explained to the satisfaction of the Court. The Court should also consider whether there will be any prejudice to be suffered by the respondent if the extension is granted. The Court should also consider whether the application has been brought without undue delay, and in certain cases, the Court will consider the public interest element.
7. The impugned judgment in this matter was delivered on 10<sup>th</sup> November 2023. The applicant did not file any notice of appeal in time or at all. A copy of a notice of appeal that is annexed to the affidavit of Mr. Joram Nyanzi is neither dated nor is there any indication that it was paid for. The Court does not know who Mr. Joram Nyanzi is, and whether he has any capacity to authoritatively depone to the relevant issues in respect of this application. Mr. Nyanzi simply states that

***“the delay and  
failure to institute the appeal within the stipulated***

***timelines was due to no default of the applicant as there has been considerable challenge in obtaining certified copies of the typed proceedings in the trial court and sudden change of counsel in taking over conduct of the matter that resulted in the discovery of the missed timeline of instituting the appeal and despite the same, the delay is not inordinate.”***

8. There is no material that supports those averments. Mr. Nyanzi does not state who the previous advocates of the applicant were; whether the applicant gave instructions to that advocate to file an appeal immediately after delivery of the impugned judgment; whether that advocate acted on the applicant’s instructions by filing a notice of appeal, or applying for certified copies of the proceedings, and neither does Mr. Nyanzi state when and how the applicant came to learn that their undisclosed advocate did not act as the applicant expected.
9. Further, Mr. Nyanzi does not also indicate when the applicant instructed its current advocates, MMA Advocates, and what transpired between 10<sup>th</sup> November 2023 when the judgment was delivered, and 7<sup>th</sup> February 2025 when this application was made.

10. There has been inordinate delay of more than 20 months and no satisfactory reason has been advanced for that delay.
11. Where there is inordinate delay in bringing an application for extension of time, and where there is no satisfactory explanation for such delay, the Court need not consider the chances of success of the intended appeal and the degree of prejudice that would be occasioned to the respondent if the application for extension of time is not granted.
12. I find that the applicant has failed to discharge its burden of laying a basis to the satisfaction of the Court for grant of the orders sought. Consequently, I dismiss this application and make no orders as to costs, since the respondent did not file any document in response to the application.

**Dated and delivered at Nairobi this 10<sup>th</sup> day of April 2026.**

**D. K. MUSINGA (PRESIDENT)**

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

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

*Signed*

**DEPUTY REGISTRAR.**