

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**APPEAL NUMBER E156 OF 2025**

*(Before D. K. N. Marete)*

**BOARD OF MANAGEMENT GICHURU HIGH SCHOOL...APPLICANT/APPELLANT**

**VERSUS**

**KENYA UNION OF DOMESTIC WORKERS (KUDHEIHA)..... RESPONDENT**

**RULING**

This is an application dated 22nd May, 2025 seeking extension of time to file and serve a Memorandum of Appeal in ELRCA E156/2025. It further seeks a stay of the judgment and decree of the trial court in MCELRC No. 375/2019 delivered on 17th April, 2025 pending hearing and determination of this application and subsequent intended appeal.

The application is grounded on the basis that the Applicant is dissatisfied with the judgment of the trial court and now wishes to appeal the same. However, the statutory period for filing of the appeal has lapsed on 17th May, 2025 by four (4) days thereby rendering this application necessary to serve the interest of justice. This was occasioned by the Applicant's indulgence with the Ministry of Education and Board of Management of the school before instructing counsel on filing of the appeal.

The Appellant/Applicant is a public school and the award of service gratuity is subject to the suit in MCELRC No. 375 of 2019 and they ought not to be condemned unheard. In any event, the

Appellant/Applicant has a high probability of success and the delay in filing the appeal was inadvertent and excusable and due to elaborate consultative process between the Ministry of Education and the Office of the Attorney General on the existence of guidelines referenced in the judgment delivered on 17th April, 2025 by the trial court in this cause.

The Appellant/Applicant further posits that the application is brought in utmost good faith and therefore no prejudice shall be suffered by the Respondent if the application is allowed. Moreover, the Applicant is willing to abide by any reasonable and just consideration this court may impose in allowing the application. It is wholly in the interest of justice that this application be allowed.

The Respondent opposes the application on the following grounds;

- 1. That the Appellant/Applicant was granted thirty (30) days stay of execution by the trial court and failed to file the Notice of Appeal within 14 days from the date of Judgment as required by law.*
- 2. That it is not true the former Deputy Director of Education in the State of Department of Basic Education through his affidavit denied signing a guide line referred to as Ministry of Education Science and Technology guidelines on personnel of Government School and Special schools filed here with is true copy of the signed document hearing his name Mr. Musa Wambua.*

3. *That the Draft Memorandum of Appeal filed with Notice of Motion will not stand the test of the law.*
4. *That other grounds will be adduced during the hearing date hereof.*

In further support of the application, the Applicant filed their written submissions dated 22nd October, 2025 in which they sought to rely on Rule 18 of the Employment and Labour Relations Court (Procedure) Rules, 2024 that provides that this court may in justifiable circumstances extend time prescribed for filing an appeal or any document relating to an appeal. This is coupled with the authority of **Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) (2014) KESC 12 (KLR) (Civ) (4 July 2014) (Ruling)** where the Supreme Court underscored that extension of time is not a right as such but an equitable remedy granted at the court's discretion in consideration of the following factors;

- a. *The length of the delay*
- b. *The reason for the delay*
- c. *The chances of success of the intended appeal; and*
- d. *The degree of prejudice to the Respondent of the application is granted.*

It is their argument and submission that a delay of four (4) days is affordable and minimal and this has in any event been satisfactorily explained as arising out of a consultative process between the Ministry of Education and the Office of the Attorney-General on the validity of the guidelines the subject matter of the judgment of court.

The Applicant urges this court to employ Article 159(2)(d) of the Constitution and administer justice without undue regard to technicalities. Again, the intended appeal raises substantial questions of law touching the legality and applicability of the alleged ministry guidelines which are the basis of the award. This goes to the root of the judgment of the trial court and merits judicial reconsideration.

Additionally, the Applicant submits that these ministry guidelines were filed in court on 15th November, 2024 whereas the hearing of the suit was on 20th May, 2024 way after the filing of the pleadings had closed. This denied the Applicant an opportunity to bring into question the legality of the said document.

Ultimately, the Applicant submits that the Respondent shall not suffer any prejudice as any inconveniences can be compensated by costs while the Applicant stand to suffer irreparable loss in the event of denial of an opportunity to appeal against an unverified and erroneous award.

The Applicant in the penultimate seeks to rely on the authority of Rule 73(2) of the Employment and Labour Relations Procedure Rules 2024 which adopts the provisions of the Civil Procedure Rules in execution proceedings before this court. Thereby, Order 42 Rule 6(2) is applicable and provides as follows;

*No order for stay of execution shall be made under subrule (1) unless-*

- (a) The court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and*

*(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.*

It is their case and submission that this being a public secondary school, it stands to suffer irreparable loss should execution proceed in this matter as this would amount to expenditure of public funds on the basis of a disputed and potentially unlawful award. Besides, the school, being a public one, does not have the funds and in any event if this are disbursed, recovery would be next to nil.

Moreover, this application was filed promptly and only four (4) days after the lapse of the appeal period and also within thirty (30) days of the judgment of court. This delay is explained and was occasioned by the consultative process between the Applicant and their parent agencies and counsel. The Applicant is all too ready to abide with any reasonable conditions that this court would impose subject to government funding.

The Respondent in answer submits that the Applicant's failure to file a notice of appeal within the mandatory deadline denies the Applicant the right to appeal as the appellant court loses jurisdiction to hear the case. This amounts to a finality of the original judgment whereby the appeal is dismissed or considered a nullity. It is custom that court would ordinarily dismiss appeals filed late without a valid reason or proper application. This is not curable under the law and therefore unsustainable in accordance with the Supreme Court authority of **Bookpoint limited and Guardian Bank Limited and Guilders International Bank Limited Application No. 4 (E006) of 2021** where the court observed as follows;

*It therefore follows that the Applicant ought to have lodged its Notice of Appeal on or before the 4th of January 2021. It did not, and neither has it sought extension of time to file its Notice of Appeal out of time. Consequently, there is no valid Notice of appeal on record and given the jurisdictional importance of a notice of appeal as stated in the Nicholas Salat case, this motion for extension to file appeal out of time is an act in futility. For even if the court were to be persuaded, upon consideration of the motion on its merit and be inclined to extend time for filing of the appeal, there is no foundation (Notice of Appeal) upon which such an appeal would be premised.*

It is notable that the strict confines of this authority do not apply to this application. This application seeks orders for extension of time to file the appeal out of time. This is the whole difference and point of departure.

I am therefore inclined to allow the application and order as follows;

- i) Each party shall bear their cost of the application.
- ii) Mention on 18th May, 2026 for confirmation of compliance on filing of the Record of Appeal.

Delivered, dated and signed this                    **17<sup>TH</sup>**                    day of                    **APRIL**  
2026.

**D. K. Njagi Marete**  
**JUDGE**

**Appearances:**

Miss Mochoge instructed by State Law Office for the Appellant/Applicant

Mr. Onong'a for the Respondent union