



REPUBLIC OF KENYA



KENYA LAW
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Kisii County Assembly Board & another v Ondieki & another (Civil Application E136 of 2025) [2026] KECA 715 (KLR) (31 March 2026) (Ruling)

Neutral citation: [2026] KECA 715 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E136 OF 2025
HA OMONDI, JA
MARCH 31, 2026**

BETWEEN

KISII COUNTY ASSEMBLY BOARD 1ST APPELLANT

CLERK, KISII COUNTY ASSEMBLY 2ND APPELLANT

AND

SAMUEL KEROSI ONDIEKI 1ST RESPONDENT

KISII COUNTY ASSEMBLY 2ND RESPONDENT

(Being an application for stay of execution pending hearing and determination of an intended appeal against the judgment of the Employment and Labour Relations Court at Kisumu (Radido, J.) dated 15th February 2023 in Cause No. E087 of 2019)

RULING

1. The 1st respondent Samuel Kerosi Ondieki, had filed a claim in the Employment and Labour Relations Court (ELRC) seeking: to be paid his entitlements in accordance with his employment terms without any hinderance; that the office of the Chairperson, Kisii County Assembly Service Board be ordered to enforce these Orders: that the 1st respondent be paid House allowance of Kshs.130,000/- per month x 57 months = Kshs.7,280,000/; travel re-imbusement (Portugal)= Kshs.940,000/; travel re-imbusement (Singapore)= Kshs.117,000/-; Non practicing allowance+ prosecutorial allowances at Kshs.40,000/- per month x 56 months= Kshs.2,240,000/-; Practicing certificate renewal cost for 5 years since 2015 = Kshs.149,100/-; CPD payments at 13,500 per year x 5 years= Kshs.67,500/-; 31 % annual gratuity @ 31 % x Kshs.370,000 x 57 months) = Kshs.6,537,900/-
2. The applicants sought dismissal of the claim stating that it was based on a gross misapprehension of the Claimant's role as a state officer.



3. The learned judge considered the evidence presented, and in the judgment which was delivered on 15th February, 2023, awarded the 1st respondent a travel reimbursement of Kshs.109,082/- and non-practicing allowance of Kshs.540,000/-The 1st applicant was also ordered to compute and pay the Claimant 31% gratuity based on the 1st respondent's last basic salary, while the other claims were dismissed. The 1st respondent was awarded costs on a half scale.
4. The applicants were aggrieved by this outcome and filed a draft Memorandum of Appeal, which they say demonstrates an arguable appeal with a high probability of success. Consequently, by a Notice of Motion dated 28th August 2025, the applicants seek orders to allow the record of appeal to be filed and served out of time; and that the record of appeal be deemed as properly filed after payment of the requisite court fees.
5. In the supporting affidavit sworn by the applicant's counsel Micheal Muchemi, he explains that he had requested for certified copies of the proceedings on 7th June 2025, but the respondent kept litigation alive by filing various applications, namely Judicial Review proceedings on 12th September 2024; an application dated 25th February, 2024 for review of the court's decision on the judicial review; and another application dated 23rd June 2025 for contempt which is yet to be heard. That the multiplicity of applications kept the applicants waiting for the outcomes; and the delay was not deliberate, but was occasioned by factors beyond their control.
6. The response filed by the respondent is oddly misplaced, unfortunately it is in reply to an application for stay of execution. The only reasonable inference to draw is that the respondent either the respondent had prepared the response in anticipation of an application or he was genuinely mixed up on his documents. Whatever the reason, the submissions do not respond to the application.
7. I have considered the application, the grounds in support thereof, submissions filed, authorities cited and the law. The issue for determination is whether the application is deserving of the orders sought. Rule 77 of the Court of Appeal Rules requires an intended appellant to lodge the Notice of Appeal, before or within fourteen (14) days of the decision, then within 7 days of lodging the notice of appeal, serve copies thereof on all persons directly affected by the appeal- this did not happen.
8. The discretion that I am called to exercise in the determination of this application is unfettered and is provided under Rule 4 of the Court of Appeal Rules which 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 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.
9. Rule 4 of the Court of Appeal Rules does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a 'just' decision in the circumstances of each case has been discussed for instance, in the case of *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 and *Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees*, Civil Application No.190 of 2019; [2020] eKLR.
10. From the explanation by the applicant's counsel, the respondent concertedly kept them in a spin having to defend or respond to one application after another, the last one being filed in June 2025; and by the time they caught their breath, time had lapsed. There is no maximum or minimum period of delay set out under the law. In this instance, the reason or reasons for the delay must be reasonable and plausible,



in this regard this Court in the case of Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

11. Undoubtedly the notice of appeal should be lodged within 14 days of the delivery of the decision which it seeks to appeal against and served within 7(seven) days after lodging, that did not happen, not because counsel was unaware of the outcome, but because he was kept on a long leash. In my considered view, that is not tantamount to delaying tactics with an intention to scuttle fruits of the outcome.
12. The period of delay is not inordinate, the reason given is plausible; and no prejudice is occasioned to the respondent as he will have his day in court on appeal.
13. The application is merited and is allowed. 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

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JUDGE OF APPEAL

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

Signed

Deputy Registrar

