



Transport Workers Union v Lufthansa German Airlines (Civil Application E278 of 2024) [2025] KECA 89 (KLR) (24 January 2025) (Ruling)

Neutral citation: [2025] KECA 89 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E278 OF 2024
LA ACHODE, JA
JANUARY 24, 2025**

BETWEEN

TRANSPORT WORKERS UNION APPLICANT

AND

LUFTHANSA GERMAN AIRLINES RESPONDENT

(Being an application for extension of time to file the Notice of Appeal and Record of Appeal out of time in an Intended Appeal from the Judgment of the ELRC Court in Nairobi (Ongaya J), dated 8th April, 2024 in ELRC No. 308 of 2019)

RULING

1. Transport Workers Union the applicant herein, have brought a Notice of Motion dated 22nd May, 2024, seeking leave to file a Notice of Appeal out of time, against the judgment of Ongaya J dated 8th April, 2024, and that the draft notice of appeal dated 17th April, 2024 be deemed to be duly filed upon payment of the requisite court fees. The respondent is Lufthansa German Airlines.
2. The origin of the application is that, via a Memorandum of Claim dated 5th May, 2019, the applicant lodged a claim against the respondent in ELRC No. 308 of 2019. Judgment was entered for the respondent. Aggrieved by the decision of the court the applicant moved to the Court of Appeal to file the Notice of Appeal dated 17th April, 2024.
3. The application is supported by the affidavit of Daniel Rakoro sworn on 22nd May 2024. In the affidavit the grounds of the application are that: the filing of the Notice of Appeal was delayed as the applicant's advocates had huge court fees arrears which hindered the timely filing; that the delay although regrettable, is not inordinate; that the appeal is arguable with high chances of success; and, that the respondent will not suffer prejudice if the appeal is not granted.



4. The applicant filed submissions dated 15th July, 2024 through the firm of Rakoro and Co. Advocates, and set out the principles that guide this Court in deciding an application for extension of time as was enumerated by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others*, Supreme Court of Kenya Application No. 16 of 2014. He also relied on the case of *Sokoro Saving and Credit Co-operative Society Ltd vs Mwamburi* (Civil Application No. E032 of 2022 (2023) KECA 381 KLR, to urge that an application for extension of time must meet the principles set in *Nicholas Salat* (Supra).
5. Counsel submitted that the reason given that the applicant was not able to file the notice of appeal on time because of the huge court fees arrears owed by his counsel to the Court of Appeal and which had to be paid first, before the Notice of Appeal was filed is valid. That the said fees was paid and the notice for fees complied with on 15th May, 2024 after the period for filing the Notice of Appeal had lapsed by 22 days. It is urged that a period of 22 days delay is not inordinate. He relied on the case of *Njoroge vs Kimani*, Civil Application No. E049 of 2022 KLR, for this submissions.
6. Counsel further submitted that there will be no prejudice to be suffered by the respondent if the application is allowed, since they will have a chance to deal with the appeal on merit. On the other hand, the applicant will suffer irreparable loss and prejudice as their members who were unfairly declared redundant would not be heard on appeal, which has overwhelming chances of success. Further that innocent litigants will be punished for reasons of delay which were not of their making. He cited the case of *Markson Karani Muchunku vs Joseph Ngari Gituku* [2021] eKLR for this assertion and urged that the application be allowed in the interest of justice.
7. I note that the applicant has not stated under which rule he has invoked the jurisdiction of this court. I am however cognizant that this being an application for extension of time, it is governed by rule 4 of the *Court of Appeal Rules, 2022*. I have considered the grounds of the application and the submissions in light of the principles set out in *Nicholas Salat* (Supra), to which the applicant referred the Court. This are that:
 - “ 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 2. A party who seeks an extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petition, public interest should be a consideration for extending time.”
8. In the end I find that the delay is not inordinate, the reason for the delay was not of the applicant’s making and it has been sufficiently explained. Reasons wherefore, I order as follows:
 - i. The application dated 22nd May, 2024, seeking leave to file notice of appeal out of time, is hereby allowed.



- ii. The draft notice of appeal dated 17th April, 2024 be and is hereby deemed to be duly filed upon payment of the requisite court fees.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JANUARY, 2025.

L. ACHODE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

