



**Kirinyaga County Public Service Board v Kenya Union of Clinical Officers;
Public Service Commission of Kenya (Interested Party) (Civil Application
E009 of 2025) [2025] KECA 350 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 350 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E009 OF 2025
S OLE KANTAI, JA
FEBRUARY 28, 2025**

BETWEEN

KIRINYAGA COUNTY PUBLIC SERVICE BOARD APPLICANT

AND

KENYA UNION OF CLINICAL OFFICERS RESPONDENT

AND

PUBLIC SERVICE COMMISSION OF KENYA INTERESTED PARTY

*(An application for extension of time to lodge a Notice of Appeal from the
Judgment of the Employment and Labour Relations Court at Nyeri (O.
Makau, J.) delivered on 9th August, 2024 in E.L.R.C. JR No. E003 of 2023.)*

RULING

1. The applicant, Kirinyaga County Public Service Board prays in the main in the Motion on notice brought under various provisions of law that the Court be pleased to enlarge time for filing Notice of Appeal and that its Notice of Appeal dated 20th August, 2024 lodged on 24th August, 2024 be deemed as properly filed and served. It is prayed in the alternative that the Court be pleased to enlarge time within which the applicant should file and serve a fresh Notice of Appeal out of time.
2. I cannot speak to prayer 4 of the Motion as it falls within the province of the full Court.
3. In grounds in support of the Motion and in a supporting affidavit of Ruth Wanyonyi, an advocate of the High Court of Kenya it is said amongst other things that Makau, J. sitting at the Employment and Labour Relations Court (ELRC) at Nyeri dismissed the applicant's Judicial Review (JR) application seeking to review a decision of Public Service Commission (PSC) of 14th April, 2021 reinstating members of the respondent union which decision was to apply mutatis mutandis to ELRC JR E001 of



2023; that the applicant applied for leave to appeal which leave was granted on 9th August, 2024; that on 20th August, 2024 the appellant while attempting to uphold Notice of Appeal encountered technical hitches with the CTS and was completely unable to upload Notice of Appeal and only managed to file the one in respect of JR E003 of 2023 on Saturday 24th August, 2024 at 5 a.m. which was a few hours late because the last day for filing Notice of Appeal was 23rd August, 2024. According to the applicant ELRC JR E001 had completely disappeared from the CTS forcing the applicant to apply for linking party registration and mapping afresh before they could file the document; that:

“...whereas it is trite that a Notice of Appeal is to be lodged within 14 days of the impugned decision, the failure to upload the Notice of Appeal within the 14 days required was for reasons beyond the Applicant’s control...”

4. Further, that the respondents have obtained a decree and are in the process of executing it; that the impact of the decision is that the applicant will be forced to absorb back to work a parallel set of medical practitioners terminated in 2019 and there are no vacancies; that the applicant has a weighty appeal. Attached to the Motion are various documents including a Notice of Appeal dated 20th August, 2024 and an untitled document that reads “... This page isn’t working .efiling.court.go.ke didn’t send any data. ERR Empty Response.”
5. There is a replying affidavit by George Maroah Gibore, General Secretary of the respondent (Kenya Union of Clinical Officers) who says that the application is res judicata, the applicant already having made a similar application before ELRC which was dismissed on 23rd January, 2023; that the applicant should have appealed that decision; that the orders sought here are meant to undermine the decision of ELRC where the applicant was ordered to reinstate members of the respondent; that the applicant has approached this Court with unclear hands having not implemented the decision of PSC; that the applicant has not explained reasons for delay in filing a Notice of Appeal; that the respondent’s members will suffer prejudice if I exercise discretion in favour of the applicant. A long history of other matters that would ordinarily not be necessary in an application like this one is given.
6. I have seen and considered written submissions by both sides.
7. Whether or not application to enlarge time by ELRC was refused has no relevance to the original jurisdiction donated by rule 4 of the Court of Appeal Rules, 2022. That rule provides.

“4. The Court may, on such terms as may be 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.”

8. In *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi Civil Application No. NAI 255 of 1997*, a decision of a single Judge of this Court which was upheld by the full bench the Court considered the factors that guide the Court in exercise of its discretion under rule 4 of our rules and stated:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are first, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted.”



9. The applicant has explained that there was a technical hitch in the system leading to a few hours of delay in filing Notice of Appeal. So there is no delay, delay being a few hours and the reason for delay is sufficiently explained. The applicant was so vigilant that it managed to file Notice of Appeal at 5 a.m. the day after the last day allowed for filing the document.
10. I think in the circumstances where the applicant says that it has been ordered to reinstate a big number of employees 7 years after they were dismissed and when vacancies are no longer available that the appeal has a chance of success.
12. The respondent cannot be prejudiced where the applicant is exercising a right of appeal.
13. All in all I am satisfied that the Motion has merit and I allow it. I will deem Notice of Appeal properly filed and served subject to payment of Court fees if not paid. Costs of the Motion will be in the appeal.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF FEBRUARY, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

