



**Inter Security Services Limited v Okwara (Civil Application
E414 of 2023) [2025] KECA 248 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 248 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E414 OF 2023
M NGUGI, JA
FEBRUARY 21, 2025**

BETWEEN

INTER SECURITY SERVICES LIMITED APPLICANT

AND

PIUS OKWARA RESPONDENT

(Being an application for extension of time to file an appeal out of time from the judgment of the Employment and Labour Relations Court (S. Chemtai Rutto J.) dated 9th June 2023 in ELRC Cause No. 246 of 2018)

RULING

1. In the application dated 23rd August 2024, the applicant seeks four substantive orders from this Court: that pending hearing of the substantive appeal, there be a stay of execution of the judgment of the trial court in ELRC No. 246 of 2018 dated 9th June 2023; a temporary injunction restraining the respondents or their servants or agents from executing the decree from the said judgment; leave to appeal out of time under rule 4 of this Court's Rules against the impugned judgment; that the notice of appeal dated 3rd August 2023 be admitted as having been preferred and lodged within time; and that the memorandum of appeal dated 23rd August 2023 be admitted out of time and be deemed to have been filed and served with such leave.
2. The application has been brought under rule 4, 5(2)(b), 41,43 and 44 of the [Rules of this Court 2022](#), rule 3(1)(2) of the [High Court \(Practice & Procedure\) Rules](#), section 10 of the [Judicature Act](#) and other enabling provisions of the law.
3. The application before me is what is referred to as an omnibus application, brought under a number of rules and seeking a variety of orders that cannot, under our Rules, be heard and determined together by a single judge- see rule 55 of the [Rules of this Court](#). The only prayer properly before me is the prayer for extension of time, which I now turn to consider.



4. The grounds on which this prayer is based are set out on the face of the application and elaborated upon in the affidavit in support of the application sworn by Isaac Okwirry, a Director of the applicant. The gist of the applicant's case is that they stand to suffer loss should the judgment of the trial court be executed against them due to the mistakes of their previous counsel. Mr. Okwirry avers that judgment was entered on 9th June 2023 against the applicant, and it was aggrieved by the decision and wished to appeal against it. Its previous advocates, however, failed to conduct its matter with due care and diligence, and failed to update them on the court's judgment date.
5. It is averred further that the applicant was only notified of the judgment dated 9th June 2023 on 27th July 2023, long after the statutory timeline for filing an appeal and seeking stay of execution had lapsed. That the applicant has since learnt that the judgment was delivered in the absence of its previous advocates, and hence stay and leave to appeal was neither sought at the time of delivery of judgment, nor formally and timely sought thereafter despite instructions to do so; and that the previous advocates proceeded to file a notice of appeal on 3rd August 2023 out of time and without leave of the court.
6. The applicant avers further that following these mistakes by its previous advocates, the applicant appointed its present lawyers, M/S Diro Advocates LLP; that the mistakes of its previous advocates should not be visited on the applicant who placed reliance on its counsel to promptly defend its interests; that the delay in filing the notice and record of appeal is explainable and is not inordinately long; and that it should not serve to prejudice an innocent litigant who wishes to prosecute the intended appeal.
7. The respondent opposed the application by a replying affidavit which he swore on 12th September 2023. He deposes that when the matter came up for mention before the ELRC on 27th February 2023 with both parties in attendance, the applicant, who had not filed submissions, was directed to file them before close of business that day and a judgment date was set for 19th May 2023. That on 3rd June 2023, the court communicated to parties through email that the judgment would be delivered on 9th June 2023 at 10.00 a.m. That the applicant did not appear in court on 9th June 2023, but judgment was delivered in the presence of the respondent's counsel.
8. The respondent avers further that on 26th July 2023, the applicant's previous advocates wrote to his advocates indicating that the applicant intended to settle the respondent's claim; that a day later, they wrote to the applicant that they were in the process of extracting the decree in order to file an appeal. The respondent avers that in light of the above matters, the applicant's advocates acted on instructions; the mistake of counsel should not arise; and the application should be dismissed with costs.
9. The applicant filed two sets of submissions, whose contents are essentially the same, dated 28th August 2023 and another set dated 4th September 2024. On his part, the respondent filed submissions dated 12th September 2023, which I have read and considered.
10. The factors that the Court is required to consider in an application under rule 4 are well settled. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231 this Court laid down the parameters for exercise of the discretionary power under rule 4 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled 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.”



11. Similarly, in its decision in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission and 7 others* [2015] eKLR, the Supreme Court stated:

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.”
12. The judgment in this matter was delivered on 9th June 2023.

The notice of appeal should have been lodged within 14 days thereafter, on or about 23rd June 2023. It was not, and the present applicant was only filed on 23rd August 2023, two months and two weeks after the judgment.
13. The explanation that the applicant gives is that it only learnt of the judgment on 27th July 2023. The respondent avers, however, and this is not controverted, that the judgment date had initially been set for 19th May, 2023, a date that had been communicated to parties when the matter came up for mention on 27th February 2023 to confirm filing of submissions. On 3rd June 2023, parties were sent a notice through an email indicating that judgment would be delivered on 9th June 2023. This notwithstanding, the applicant was not represented when judgment was delivered.
14. The applicant has blamed the delay in filing its notice of appeal on the failure of its previous counsel to act on its instructions. It pleads that the mistake of counsel should not be visited upon it. Ultimately, however, a matter belongs to a litigant, who must be diligent in following its matter- see *Kirwa & another v Choge & 2 others* (Civil Application E063 of 2023) [2024] KECA 403 (KLR) (26 April 2024) (Ruling).
15. The applicant has not made any averments with respect to what steps it took to follow up its case. Indeed, the evidence placed before the Court in the respondent’s replying affidavit shows that by a letter from its advocates dated 26th July 2023, the applicant indicated its intention to settle the respondent’s claim. A day later, it indicated that it was pursuing the decree with a view to pursuing an appeal. It has not averred that these letters were written without instructions.
16. The present application was filed almost a month later, on 23rd August 2023, almost three months after the delivery of the judgment that the applicant seeks to appeal against. In *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, this Court stated:

“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.”
17. A perusal of the affidavit in support of the application does not reveal any explanation for the close to two months’ delay between 9th June and 27th July 2023 when the applicant alleges it learnt of the delivery of the judgment. Nor is there an explanation for the period of a further twenty-seven days between 27th July and 23rd August 2023 when this application was filed.
18. That being the case, I find the application dated August 23, 2024 to be devoid of merit, and it is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF FEBRUARY, 2025



MUMBI NGUGI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

