



**Owuor v Rotich & 2 others (Sued as the Chairman, Secretary and Treasurer of Free Pentecostal Fellowship in Kenya Thessalia Mission Centre & another (Civil Appeal (Application) 95 of 2020) [2025] KECA 708 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KECA 708 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL (APPLICATION) 95 OF 2020**

**LK KIMARU, JA**

**APRIL 25, 2025**

**BETWEEN**

**MOSES OMONDI OWUOR ..... APPLICANT**

**AND**

**WILLIAM ROTICH CLEMENT OTIENO OGUTA, DOROTHY ONYANGO  
(SUED AS THE CHAIRMAN, SECRETARY AND TREASURER OF  
FREE PENTECOSTAL FELLOWSHIP IN KENYA THESSALIA MISSION  
CENTRE ..... 1<sup>ST</sup> RESPONDENT**

**THESSALIA MISSION BOARD OF GOVERNORS ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for extension of time to file and serve the record of appeal out of time from the Judgment of the Employment and Labour Relations Court of Kenya at Kisumu (Nduma, J) dated 18th September, 2019 in ELRC No. 298 of 2025)*

**RULING**

1. The Applicant, Moses Omondi Owuor moved this Court by notice of motion essentially under Rule 4 of the Court of Appeal Rules seeking the following orders from the Court.
  - “2. This Honourable Court be pleased to grant the applicant leave to appeal out of time against the decision and ruling of Hon. Justice Mathews N. Nduma delivered at Kisumu on 18<sup>th</sup> September, 2019 in Kisumu ELRC No. 298 of 2015.
  3. The Memorandum and record of appeal filed on record be deemed to have been duly filed and served.”



2. The grounds in support of the application are stated on the face of the motion. The applicant states that he was prevented from lodging the appeal in time due to the suspension of all court activities on 15<sup>th</sup> March, 2020 due to the COVID-19 Pandemic. The applicant states that his appeal has good chances of success. He contends that no prejudice will be occasioned upon the respondents if the application is allowed. The application is supported by the annexed affidavit of Collins Orieyo, the applicant's advocate.
3. The application was filed in Court on 24<sup>th</sup> July, 2020. For reasons that are not apparent from the record, the application was not listed for hearing before the Court. No matter. The application is unopposed.
4. The respondents did not file any replying affidavit in opposition to the application. They did not file any written submission in opposition to the application when they were served by the applicant with the hearing notice.
5. The applicant was aggrieved by the judgment delivered on 18<sup>th</sup> September, 2019 by the Employment and Labour Relations Court (ELRC). The applicant timeously filed the notice of appeal on 30<sup>th</sup> September, 2019. He also wrote to the trial court requesting for certified typed copies of the proceedings and judgment on 22<sup>nd</sup> October, 2019. The applicant was informed by the trial court that the typed and certified copies of the proceedings were ready for collection on 4<sup>th</sup> March, 2020. Indeed, a certificate of delay had been prepared by the court and was ready for collection by the applicant. The applicant states that due to the lockdown necessitated by measures put in place upon the declaration of COVID-19 as a Pandemic, which resulted in the closure of courts, he was prevented from collecting the said proceedings until sometime in July 2020 when some of the restrictions were eased. By that time, the period by which he was required to file and serve the record of appeal had elapsed. It was for that reason that the applicant filed the present application.
6. Rule 4 of the *Court of Appeal Rules* grants this Court unfettered discretion to extend time for any steps to be taken beyond the period stipulated by the *Rules*. The discretion is however exercised judiciously and not capriciously or on whim. Over time, this Court has come up with principles which guide the Court in the exercise of its discretion. It includes the length of delay, the reason for the delay, the chances of the appeal succeeding and whether the respondents will be prejudiced. (See *Leo Sila Mutiso v. Hellen Wangari Mwangi* [1999] 2EA 23).
7. The applicant gave the reason for the delay in the collection of the certified typed copies of the proceedings and judgment and lodging the memorandum and record of appeal to the closure of the courts at the material time due to COVID-19 lockdown. This Court is persuaded by the reason given by the applicant. The court takes judicial notice that the courts were indeed closed due to COVID-19 lockdown at the time. Limited services resumed a couple of months later. That is when the applicant filed the present application. It is clear to the Court that the applicant is desirous of pursuing his appeal. The respondents did not file any response in opposition to the application. They cannot therefore be prejudiced by this Court exercising its discretion in the applicant's favour.
8. In the premises therefor, the application is allowed. The applicant is granted extension of time to file and serve the memorandum and record of appeal out of time. If the same has been filed and served, it is deemed to be properly and duly filed and served. If not, the memorandum and record of appeal 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 25<sup>TH</sup> DAY OF APRIL, 2025.**

**L. KIMARU**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

