



**Ahmed & 2 others v Mohamed & 2 others (Civil Appeal (Application)
E082 of 2025) [2025] KECA 879 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KECA 879 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E082 OF 2025
LA ACHODE, JA
MAY 23, 2025**

BETWEEN

**ADOW OSMAN AHMED, WAJIR COUNTY PUBLIC SERVICE BOARD
SECRETARY 1ST APPLICANT
THE COUNTY GOVERNMENT OF WAJIR 2ND APPLICANT
HILLOW ISSACK MUMIN, COUNTY SECRETARY, WAJIR COUNTY
GOVERNMENT 3RD APPLICANT**

AND

**IBRAHIM ABDI MOHAMED 1ST RESPONDENT
AHMED GUHAD OMAR 2ND RESPONDENT
MOHAMUD HASAI MUSA 3RD RESPONDENT**

*(Being an application seeking leave to file an appeal out of time from
the ruling of the Employment and Labour Relations Court at Nairobi
(Ongaya J) dated 26th July, 2024 in PETITION NO. E047 OF 2024)*

RULING

1. By a notice of motion dated 30th January 2025 expressed to be brought under rules 4, 41, 43 and 47 of the Court of Appeal Rules 2022, Adow Osman Ahmed the Wajir County Public Service Board Secretary, the 1st applicant, the County Government of Wajir, the 2nd applicant, and Hillow Issack Mumin, the County Secretary Wajir County Government, are seeking orders for extension of time to file an appeal out of time against the judgment of the Employment and Labour Relations Court (ELRC) Nairobi.



2. The judgment was rendered by Ongaya J in Petition No. E047 of 2024 dated 26th July, 2024. Further that the applicants' Notice of Appeal and Memorandum of the intended Appeal, both date 30th January, 2025, be deemed as properly filed and on record and that the cost of this application be on the cause.
3. The grounds of the application as set out on the face thereof are that the 2nd applicant, the County Government of Wajir is established under Article 6(1), 176 and the First Schedule of *the Constitution*. That it stands prejudiced by the impugned judgment to the extent that it ordered the reinstatement of the respondents into unavailable positions, by reason of their resignation and redeployment. The judgment further ordered the payment of their alleged accrued salaries, allowances and benefits from the date of redeployment, which salaries, allowances and benefits are not payable to the respondents.
4. The applicants aver that the superior court found in favour of the respondents, adopted the decision of the Public Service Commission as a decree of the Court and issued orders that:
 - “(a) The Applicants revert to the positions they held before they were seconded by the County Public Service Board.
 - b. The County Government of Wajir be and is hereby directed to pay the Appellants all the accrued salaries, allowances and benefits from the date they were redeployed back by the County Public Service Board.
 - b. The Respondents and the County Secretary, Wajir County Government be and are hereby directed to implement the decree.”
5. The effect of the orders was to reinstate the respondents into the employment of the County Government and the applicant intends to exercise its constitutional right of appeal. It should therefore, not be defeated by procedural technicalities. That it has a draft Memorandum of Appeal dated 30th January, 2025 and it should not be chased from the seat of justice, in view of Article 159(2)(d) which stipulates that justice shall be administered without undue regard to procedural technicalities.
6. The applicants state that the respondent will not suffer any harm or prejudice if the orders sought are granted. On the contrary, should the orders be declined, the applicant's constitutional right to fair hearing will be violated and the applicant will suffer irreparable harm in terms of continuous revenue loss as a result of the impugned judgment and orders. That it is in the best interest of justice for the orders to be granted to the County Government.
7. The applicants aver that the delay in lodging the appeal is not inordinate and is not due to the fault of the applicants. It is due to the fact that there was another pending suit in the Judicial Review Division of the superior court, which challenged the decision of the Public Service Commission (PSC), and time was taken to deliberate on the best way forward in disposal of the dispute, subject of the intended appeal.
8. The application is supported by the affidavit dated 30th January, 2025 sworn by Naema Ibrahim Somow, the County Attorney General of the 2nd Applicant. In the affidavit, counsel deposes that there is prejudice to be suffered by the County, on account of the impugned judgment and the applicant, being the custodian of public funds, will incur monetary loss from public coffers if the impugned judgment is implemented. That there is a real risk that the respondent will proceed to institute contempt of court proceedings against the County Secretary, Wajir Government, who was directed by the superior court to implement the decree.



9. In addition, counsel deposes that the effect of the orders to reinstate the respondents are highly prejudicial to the Country Government, as the positions subject of litigation are unavailable, having been filled upon the resignation and re- deployment of the respondents into executive positions.
10. In a startling turn of events counsel seems to have veered off thereafter, to advance averments in support of stay of execution orders under rule 5(2)(b), which are not applicable in this application for extension of time under rule 4.
11. In response, Ahmed Guhad Omar, the 2nd respondent was granted authority to swear the replying affidavit dated 25th February, 2025 on behalf of all three respondents. He deposed that the dispute herein arose from sudden stoppage of salaries by the applicant in April 2023. Hitherto, the respondents have not received their salaries. They eke out a living by the grace of good Samaritans. They filed their first disputes to the PSC County Appeal, being No. 55, 56, 57 and 58 of 2023. In its decision dated 6th September, 2023, the Commission held as follows:
 - i. The appellants revert back to the positions they held before they were seconded by the County Public Service Board;
 - ii. The County Government of Wajir be and is hereby directed to pay the Appellants all the accrued salaries, allowances and benefits from the date they were redeployed back by the County Public Service Board: and
 - iii. The respondents and the County Secretary Wajir County Government, be and are hereby directed to implement this decision.
12. It is deposed that the applicants, despite being parties in the appeals before the PSC, they adamantly refused to comply with the decision of the PSC, forcing the respondents to move the High Court for judicial review orders in Nairobi ELRC Petition No. E047, where the applicants were ordered to comply with the decision of the PSC. The applicants did not challenge the decision of the PSC. Instead, they reinstated one, Nasteha Kanyare Mohamed the 2nd appellant in the PSC appeals, in compliance with the decision of the PSC dated 6th September, 2023. That this selective compliance with the decision of the PSC is manifest of negative discrimination contrary to the National Values and Principles of Governance.
13. The applicants are accused of being economical with the truth and deliberately failing to disclose that they filed an application at the PSC, Review No. E015 of 2024 for review of the decision of the PSC dated 6th September, 2023. That the issue of the applicants being custodians of public funds does not arise and not complying with court orders is tantamount to disobedience to those orders. That the applicants have not come to equity with clean hands and are hell bent on frustrating the fruits of the judgment issued in petition ELRC Petition No. E047 of 2024 in favour of the respondents.
14. The respondents depose that the Notice of Appeal dated 30th January, 2025 is incurably fatal, having been filed eight (8) months after the impugned judgment was delivered on 26th July, 2024. That the delay manifests the intention of the applicant to frustrate the respondents further and the Notice of Appeal is a jurisdictional pre-requisite which must be adhered to. That although appeal is a constitutional right, it is not absolute and it must adhere to strict timelines of the court. It is also deposed that the Memorandum of Appeal is incurably defective having been filed before leave was granted to file the Notice of Appeal and the inordinate delay cannot be excused.
15. The respondent deposed that the PSC Board is their employer which does posting to the County Government and therefore, creation and abolishment of offices must be done formally with written



documentation explaining the reasons. It is not the County Government that creates and abolishes offices, and lack of annexures by the applicants tells of their utter disrespect to the Court.

16. On 30th April 2025 the Deputy Registrar of this Court gave directions for the filing of submissions to dispose of the application and informed the parties that their appearance would not be necessary. When the matter came before me for hearing on 12th May 2025, none of the parties had filed submissions.

17. This being an application for extension of time, the jurisdiction of this Court is invoked under rule 4 which clothes the Court with the mandate to exercise the discretion to extend time otherwise limited by these rules, or a decision of the Court, or Superior Court. The rule provides that:

“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.”

18. This Court outlined the factors for consideration in granting Extension of time an appeal in *Impreal Bank Limited (in receivership) and Another v Alnasir Popat and 18 others* [2018] eKLR, as follows:

“Some of the considerations to be borne in mind while considering an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity”

19. Whether the appeal is arguable does not call for much debate in view of the grounds in the annexed memorandum of appeal. One arguable ground is sufficient to avail an applicant a chance to be heard on appeal. I am therefore satisfied that the appeal is idle.

20. Considering the length of delay, the rules do not set out the number of days that may be considered as inordinate delay. Each case is to be determined on its own facts. The Court of Appeal stated this in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, as follows:

“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.”

21. 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. A party who seeks an extension of time has the burden of laying a basis to the satisfaction of the court. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis to establish whether the reason for the delay is reasonable. The delay should be explained to the satisfaction of the Court. - See *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others*, Supreme Court of Kenya Application No. 16 of 2014.

22. The impugned judgment was delivered on 26th July, 2024. The Notice of Appeal and Memorandum of the intended Appeal, for which leave is sought are both date 30th January, 2025. That is more than



six (6) months later. In the supporting affidavit the applicants gave no explanation for the delay at all. There is therefore, no basis for the Court to make a finding that the reason for the delay is plausible and satisfactory as to unlock the Court's flow of discretionary favour as stated in Chemaringo's case (supra).

23. In the end I come to the conclusion that the delay was inordinate and has not been explained. It is not lost on the Court that the applicants were not even serious enough to file submissions and attempt to explain the reason for the delay. In the circumstances I consider it futile to consider the question on the prejudice to be suffered by either party if the orders sought are granted.

Consequently the Notice of Motion dated 30th January, 2025 is hereby dismissed. The applicants shall bear the costs of this application.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY, 2025.

L. ACHODE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

