



REPUBLIC OF KENYA



**Awadh v Noor Roundation Registered Trustees (Trading as Madina Muslim School)
(Civil Application E116 of 2024) [2025] KECA 759 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KECA 759 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E116 OF 2024**

F TUIYOTT, JA

MAY 9, 2025

BETWEEN

MOHAMAD JULLO AWADH APPLICANT

AND

**NOOR ROUNDATION REGISTERED TRUSTEES (TRADING AS MADINA
MUSLIM SCHOOL) RESPONDENT**

*((Being an application for extension of time to file an Appeal out
of time from the judgment of Employment and Labour Relations
Court at Mombasa (M. Mbaru, J.) dated 25th January, 2024))*

RULING

1. After the superior court below pronounced its judgment on 25th January, 2024 in Mombasa ELRC Appeal No. E041 of 2023 and allowed the appeal in favour of the respondent to the extent of reviewing the awards granted by the trial court, the appellant herein being dissatisfied, through his advocates, preferred an appeal before this Court and filed a notice of appeal dated 30th January, 2024, the same day, and served the same upon the respondent on 1st February, 2024.
2. Thereafter, the advocates, requested for certified copies of the proceedings, judgment and decree on 2nd February, 2024 and were alerted of their readiness for collection on 5th March, 2024 and furnished with them on 8th March, 2024. A certificate of delay was issued to that effect. Subsequently, the advocates prepared a memorandum and record of appeal and lodged the same for assessment on 11th April, 2024 and when making payment of the assessed fees, the same failed to go through. Upon inquiry with the registry, the registry advised that the system had under assessed the court fees and a fresh assessment was made at Kshs.15,800. This was close to the amount awarded by the superior court below and the applicant thought it to mock the intended appeal. He thus approached his advocates to make an application to be allowed to litigate as a pauper and eventually his advocates, after considering other



options, decided to make the payment for him. When the payment was eventually made on 21st August, 2024, another

two (2) months had lapsed from when the certificate of readiness was issued.

3. The above narration of events is set out in an affidavit in support of the application now before Court dated 22nd October, 2024, seeking that the memorandum and record of appeal dated 9th April, 2024 and the supplementary record of appeal filed on 15th October, 2024, filed out of time, be admitted and deemed as duly served upon the respondent. He avers that the delay of two
(2) months is not inordinate and is excusable and the reasons advanced for the delay are not far-fetched and are demonstrated by evidence and that, similarly, the appeal has a high chance of success. The applicant filed submissions in support of his application.
4. The respondent opposes the application through a replying affidavit sworn on 3rd December, 2024 by Hassan Ali Awadh, the administrator of the respondent Trust. He acknowledges that a notice of appeal was duly filed and served within the prescribed timelines. He however contends that the record of appeal served on 22nd August, 2024 was late and the applicant had not advanced sufficient reasons for the delay and is thus inexcusable and inordinate. He argues, further, that since the applicant admits to being a pauper, the respondent will not be able to recover costs should the Court allow the application and the appeal fails, and this exposes the respondent to great prejudice.
5. When considering the application before Court, I travel a well-trodden path. For example, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi – Civil Application No. Nai 251 of 1997* this Court stated;

“It is now settled that the decision whether 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 reasons 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.”
6. The certificate of delay issued on 5th April, 2024 certified that the proceedings were ready for collection on 5th March 2024. The appeal ought to have been filed within sixty (60) days of that date and so was timeously lodged for assessment of filing fees on 11th April, 2024. There was however a technical challenge in paying the initially assessed fees of Kshs.1,500, as fees had been under assessed, the correct fees being Kshs.15,800. The applicant was unable to pay the corrected fees and eventually his advocates on record made the payment on his behalf and by the time the appeal was finally filed on 21st August, 2024, there was lateness of about three and a half months. There was then a further lateness of two months before the present motion was filed on 25th October 2024. The reasons proffered for the greater period of delay are plausible and as the cumulative period of delay is also not so inordinate, it is excusable.
7. Even though the respondent argues that it will suffer prejudice if the extension is granted and the appeal is eventually dismissed because the applicant, being an admitted pauper, will be unable to pay costs, these proceedings for extension of time are not the proper forum to raise that apprehension. If the respondent is of the view that the security of costs already deposited is inadequate to cover its eventual costs then it should apply for enhanced security of costs under rule 111(3) of the Rules of this Court.
8. The notice of motion dated 22nd October 2024 is hereby allowed.



9. The memorandum and record of appeal dated 9th April, 2024 and the supplementary record of appeal filed on 15th October, 2024 are hereby deemed as duly filed and served. Costs of the application shall be in the intended appeal.

DATED AND DELIVERED AT MOMBASA THIS 9TH DAY OF MAY, 2025.

F. TUIYOTT

JUDGE OF APPEAL

