



REPUBLIC OF KENYA



KENYA LAW
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**Kiarago v Mathews t/a Matbronze Wildlife Art (Civil Application
E491 of 2024) [2025] KECA 1110 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1110 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E491 OF 2024**

F SICHALE, JA

JUNE 20, 2025

BETWEEN

FRIDAH MUKWAMUGU KIARAGO APPLICANT

AND

DENIS MATHEWS T/A MATBRONZE WILDLIFE ART RESPONDENT

(Being an Application for Extension of Time to file Memorandum and Record of Appeal out of time against the Judgment of the Employment and Labour Relations Court (Dr. Gakeri J), dated 10th July 2024 in (Nairobi ELRC Cause No. E208 of 2023)

RULING

1. By the motion on notice dated 1st October 2024, brought pursuant to the provisions of Article 59 of the *Constitution*, Sections 3, 3A and 3B of the *Appellate Jurisdiction Act*, and Rules 4, 41 and 43 of the *Court of Appeal Rules 2010* and all enabling provisions of the Law, Fridah Mukwamugu Kiarago (“the applicant herein”) has invoked the jurisdiction of this Court sitting as a Single Judge seeking the following orders;
 - “i. Spent.
 - ii. This Honourable Court be pleased to grant the applicant leave to file the Memorandum and Record of Appeal out of time against the judgment of the superior court in Nairobi Employment and Labour Relations Court Case No. E208 of 2023 entered by Hon. Justice Dr. Jacob Gakeri on 10th July 2024.
 - iii. The Honourable Court be pleased to extend time for filing the Memorandum of Appeal and Record of Appeal against the judgment of the superior court in Nairobi Employment and Labour Relations Court Case No. E208 of 2023.
 - iv. Costs of and incidental to this application be in the cause.



- v. Any other orders as this Honourable Court may deem fit in the interests of justice.”
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant who deposed inter alia that being dissatisfied with the judgment delivered on 10th July 2024, by the Employment and Labour Relations Court in Nairobi, (Dr. Gakeri J), in Nairobi ELRC Cause No. E208 of 2023, she had instructed her advocates to file an appeal against the same.
 3. That, her advocates duly filed and served a Notice of Appeal on the respondent’s advocates on 12th July 2024, but they were unable to file a Memorandum of Appeal before this Honourable Court in good time and within the time limits set by this Honourable Court.
 4. She further deposed that the time for filing the Memorandum of Appeal had since run out and that she was on the verge of being locked out from pursuing the appeal on its merits and that further, the delay in filing the necessary documents was not inordinate and was in any event excusable.
 5. The motion was opposed vide a replying affidavit sworn on 29th October 2024 by Mr. Mathew Denis, the proprietor of the respondent who deposed inter alia that the applicant had not provided any evidence in the supporting affidavit to demonstrate any steps take to follow up with or instruct her advocates to file an appeal after lodging the Notice of Appeal on 12th July 2024 and as such, she didn’t deserve indulgence of this Court.
 6. It was submitted for the applicant that she had demonstrated that she immediately and timeously sought to exercise her right to be heard on appeal by instructing counsel to issue Notice of Appeal to the respondent and seek for certified copies of proceedings and the judgment and that she had demonstrated that she had been following up on the appeal almost from the pronouncement of the same and that inadvertent omissions on part of her counsel should not be visited upon her.
 7. It was further submitted that the delay in filing the instant application was not inordinately long so as to disentitle her extension of time as sought and that further, no orders whatsoever were granted to either party in the impugned judgment and that as such, no prejudice would be occasioned to the respondent.
 8. On the other hand, it was submitted for the respondent that the Notice of Appeal herein was lodged on 12th July 2024, but served on 24th July 2024, which was outside the 7 day prescribed period under Rule 79 of the Court of Appeal Rules 2022 and that further, the Notice of Appeal was served 12 days after filing which delay had not been explained.
 9. It was further submitted that the applicant had not provided any evidence in the supporting affidavit sworn on 4th October 2024 and in the further affidavit sworn on 29th November 2024, to demonstrate any steps taken to follow up with her advocates to file an appeal, after lodging the Notice of Appeal on 12th July 2024 and that in the circumstances, she was not diligent in following up on the appeal as alleged.
 10. Turning to prejudice, it was submitted that the respondent would suffer significant prejudice due to the applicant’s inaction as the Superior Court’s decision to dismiss the suit was an exercise of discretion which this Court should be reluctant to interfere with.
 11. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the further affidavit, the respective parties’ submissions, the cited authorities and the law.



12. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not have now taken a well beaten path. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion, the Court should do so judiciously.

13. See *Mwangi v Kenya Airways Limited* [2003] KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled that the decision whether or not to extend 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.”

12. In the instant case and as regards the length of the delay, the impugned judgment was delivered on 10th July 2024, and the Notice of Appeal was filed within the stipulated timelines i.e. 12th July 2024.

13. On the other hand, the instant motion was filed on or about 1st October 2024, a delay of about 2 months and 20 days, which delay from the circumstances of this case I consider not to be inordinate.

12. Turning to reasons proffered for the delay, it was contended by the applicant that the same was due to the fact that on 16th August 2024, the applicant’s counsel went on leave and inadvertently failed to update the register and file an appeal and that by the time the applicant’s counsel returned from his leave on 30th September 2024, the time for filing the appeal had run out. The applicant subsequently filed the instant motion on or about 1st October 2024, which was almost immediately after her counsel resumed from leave.

13. Given the circumstances, I consider the reasons given for the delay to be reasonable/plausible and ultimately therefore, I am of the considered opinion that the delay herein has been sufficiently explained to the satisfaction of this Court.

14. As to the arguability or otherwise of the intended appeal, it would not be in my place to make definitive findings on the same sitting as a Single Judge and I will therefore not delve into the issue.

15. Finally on prejudice, I am satisfied that the respondent would not be prejudiced in anyway if the instant motion was allowed as no orders were granted to either party in the impugned judgment, as the applicant’s claim was merely dismissed.

12. The totality of my findings therefore is that the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time.

13. Accordingly, the applicant’s motion dated 1st October 2024, is merited and the same is hereby allowed as prayed. The applicant shall proceed to file her Memorandum and Record of Appeal within 30 days from the date of this ruling, failure to which these orders shall stand vacated.

14. The costs of this motion shall abide the outcome of the intended appeal.



15. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2025.

F. SICHALE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

