



**Koitalel Samoei University College v Chemutai & another (Civil Application  
E014 of 2025) [2025] KECA 1057 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1057 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E014 OF 2025  
MA WARSAME, JA  
JUNE 12, 2025**

**BETWEEN**

**KOITALEL SAMOEI UNIVERSITY COLLEGE ..... APPLICANT**

**AND**

**FLORENCE CHEMUTAI ..... 1<sup>ST</sup> RESPONDENT**

**DEPUTY REGISTRAR ELC ELDORET ..... 2<sup>ND</sup> RESPONDENT**

*(An application for extension of time to file a notice of appeal, against  
the judgment of the Employment and Labour Relations Court at Eldoret  
(Onyango, J.) dated 7th November, 2024 in ELRC No. E015 of 2023)*

**RULING**

1. The applicant, Koitalel Samoei University College, has filed the instant application dated 24<sup>th</sup> February 2024, seeking leave to file a notice of appeal and record of appeal out of time. The basis for the said application, as stated on the face thereof and supported by the affidavit of the CEO of the applicant, Prof. Winston Jumba Akal, is that:
  - a. Judgment in the matter was scheduled for delivery on 21<sup>st</sup> June 2024;
  - b. On the stated date, the deponent waited on the virtual platform for several hours, but there was no activity;
  - c. Upon further inquiry, he was informed by the Deputy Registrar that judgment would be delivered on 13<sup>th</sup> February 2025;
  - d. Again, on the communicated date, he attended court and was informed by the Judge that judgment had been delivered on 7<sup>th</sup> November 2024;



- e. That the applicant was unable to file the notice of appeal and record of appeal within statutory timelines due to the miscommunication; and
  - f. That the appeal has high chances of success and the respondents will not be prejudiced if the orders sought are granted.
2. I have considered the application and the affidavits on record. In considering an application of this nature under rule 4 of this Court's Rules, a single judge exercises wide and unfettered discretion, which must however be exercised judiciously and never arbitrarily or capriciously. The Court has to take into account, among other factors, the length of the delay; the reasons for the delay; whether the intended appeal is arguable or the chances of its success if the application is allowed; and the degree of prejudice to the respondent if the application is granted. See *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1977] eKLR
  3. In the present case, the evidence on record demonstrates that the applicant consistently followed up on their matter with commendable diligence. On 21<sup>st</sup> June 2024, the applicant wrote to the court to inform them that judgment in the matter was not delivered. After several inquiries, he was informed that the judgment would be delivered on 13<sup>th</sup> February 2025. Dissatisfied with the new date, the applicant wrote a letter to the Deputy Registrar detailing their dissatisfaction with the date and demanded reasons for the distant date.
  4. The registry, in a response dated 17<sup>th</sup> July 2024, apologised for the delay, citing the Judge's workload, and confirmed that a fresh date would be issued once the Learned Judge resumed from vacation. When the date of the judgment rolled around, the applicant wrote to the court at 5:11 AM pointing out that the matter was not listed. Nonetheless, the applicant attended the proceedings which commenced at 2:00 PM. Upon raising the issue of non-listing with the court, he was informed that judgment in the matter had already been delivered. In the circumstances, he filed a notice of appeal and letter requesting proceedings on 19<sup>th</sup> February, 2025.
  5. Given the detailed history of the correspondence above, I find that good cause has been established for the grant of the extension sought. The delay was neither inordinate nor attributable to the applicant. The reasons advanced are compelling and supported by credible documentary evidence which paint a picture of a diligent litigant.
  6. I therefore find that, the delay is entirely attributable to the court's administrative failings and not to any act or omission on the part of the applicant. In such circumstances, it would be manifestly unjust to penalise the applicant for delays caused by the very institution from which they seek justice. In addition, the draft Memorandum of Appeal attached raises several issues that warrant consideration by this Court.
  7. Accordingly, I find merit in this application and it is hereby allowed. The applicant is granted leave to file a notice of appeal and record of appeal within 60 days from the date of this order with no orders as to costs.

**DATED AND DELIVERED AT ELDORET THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**M. WARSAME**

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**JUDGE OF APPEAL**

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



Signed.

**DEPUTY REGISTRAR.**

