



**Ogola v Bob Morgan Services Limited (Civil Application
E043 of 2025) [2025] KECA 1389 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1389 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E043 OF 2025
LK KIMARU, JA
JULY 30, 2025**

BETWEEN

DAVID OCHIENG OGOLA APPLICANT

AND

BOB MORGAN SERVICES LIMITED RESPONDENT

*(Being an application for extension of time from the Ruling of the
Employment and Labour Relations Court of Kenya at Kisumu (J. Gakeri,
J) dated 19th February, 2025 in ELRC Misc. Appl. No. E124 of 2024)*

RULING

1. David Ochieng' Ogola, the applicant, herein moved this court by notice of motion essentially under Rule 4 of the Court of Appeal Rules seeking to be granted leave to appeal out of time, and specifically to lodge the notice of appeal out of time. The application is supported by the grounds on the face of the application and the supporting affidavit of the applicant. The applicant, inter alia, depones that he was aggrieved by the Ruling of the Employment and Labour Relations Court (ELRC) delivered on 19th February, 2025. The applicant explains the reason for the delay in lodging the notice of appeal in time to be miscommunication that arose when he mistakenly assumed that the office of Occupational Safety and Health Offices would enable him enforce compliance, which unfortunately was not the case. The applicant states that he has a good appeal which raises serious legal issues with strong chances of success. He has annexed a draft copy of the memorandum of appeal. The applicant has already requested for certified typed copies of the proceedings and judgment of the ELRC.
2. The application is opposed. Dennis Michieka, the Chief of Staff of the respondent swore a replying affidavit in opposition to the application. The respondent disputes the applicant's assertion that he has a good appeal with chances of success. He narrated the litigation history between the applicant and the respondent which resulted in the impugned decision. He pointed that this Court lacks jurisdiction to entertain a challenge on the decision of the Director of Occupational Safety and Health Services. The



respondent states that the applicant placed no sufficient reason to persuade this Court to exercise its discretion in his favour. The respondent urged the Court to dismiss the application as it lacks merit.

3. Both the applicant and respondent filed written submissions and cited authorities in support of their respective opposing positions. The jurisdiction of this Court under Rule 4 of the Court of Appeal Rules is discretionary and is unfettered. However, in the exercise of its discretion, this Court must take into consideration, inter alia, the following factors; the reason of delay, the length of delay, the possible prejudice to the respondent and the strength or otherwise of the applicant's intended appeal [see *Ngei v. Kibe & another* [2021] KECA 242 (KLR)].
4. In the present application, it is clear that the applicant moved the Court timeously once he learnt that he could not obtain relief from the office of Occupational Safety and Health Services. He filed the present application within 20 days after the period which the applicant was required to have lodged the notice of appeal. This Court is of the considered view that this period is not inordinate. The applicant exhibited diligence in promptly approaching the Court once he discovered that his remedy lay in appealing to this Court. The respondent's challenge to the application is essentially on the merits or otherwise of the intended appeal. The respondent will have his day in court to ventilate its sentiments.
5. In the premises therefor, this Court allows the application. The applicant is granted leave to appeal out of time. The notice of appeal shall be filed and served within fourteen days of today's date. The respondent shall have the costs of the application.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JULY, 2025.

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR

