



REPUBLIC OF KENYA



**Embassy of Sweden, Nairobi v Kusewa & another (Civil Application
Sup E002 of 2020) [2025] KECA 1337 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1337 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION SUP E002 OF 2020
DK MUSINGA, JA
JULY 18, 2025**

BETWEEN

EMBASSY OF SWEDEN, NAIROBI APPLICANT

AND

LUCY MINGO KUSEWA 1ST RESPONDENT

RENAEDA MBOJE MJOMBA 2ND RESPONDENT

(Being an application for certification and leave to appeal to the Supreme Court of Kenya against the Judgment and Orders of the Court of Appeal at Nairobi (W. Karanja, H. Okwengu & F. Sichale, JJ.A.) delivered on 24th April 2020 in Civil Appeal No. 345 of 2017)

RULING

1. The applicant's notice of motion dated 19th August 2020 contains ten (10) prayers. This ruling is in respect of prayer 2 only, which seeks extension of time for the applicant to seek certification and leave to appeal to the Supreme Court from the decision and orders of this court (W. Karanja, H. Okwengu & F. Sichale, JJ.A.) dated 24th April 2020.
2. The background to the said application is that sometime in February 2016 the applicant filed two applications before the Employment and Labour Relations Court (ELRC) at Nairobi, ELRC No. 2193 of 2015 and ELRC 2194 of 2015, seeking, inter alia, striking out of the suits filed against it by the respondents. The applications were premised on a preliminary point of law that the court had no jurisdiction to hear and determine the two suits before it as a consequence of the privileges and immunities enjoyed by the applicant by virtue of being the Embassy of the Kingdom of Sweden, a sovereign state.
3. By a ruling dated 31st July 2017, the ELRC (H. Wasilwa, J. dismissed the two applications.



4. Dissatisfied with that decision, the applicant lodged an appeal to this Court, Civil Appeal No. 345 of 2017. In the intervening period, following delivery of the ruling by Wasilwa, J. the applicant's then advocates on record, M/s Hamilton Harrison and Matthews, filed an application before the ELRC and sought, inter alia, stay of proceedings before that court pending hearing and determination of the applicant's appeal against the said ruling. The application was allowed vide a ruling delivered on 11th October 2019 pending hearing and determination of Civil Appeal No. 345 of 2017.
5. Subsequently, the appeal before this Court was heard and judgment delivered on 24th April 2020, with the result that the appeal was dismissed. The applicant is dissatisfied with the judgment of this Court and intends to challenge the same before the Supreme Court on ground that the intended appeal involves a matter of general public importance on a matter of law; that an Embassy which enjoys the privileges and immunities as an extension of a Sovereign State, is immune from the jurisdiction of the laws of the Embassy's receiving State, especially where there has been no such waiver of the said sovereign immunity.
6. On 5th May 2020, the applicant lodged a notice of appeal, evincing its intention to challenge the decision of this Court.
7. In its affidavit in support of the application, Jan Staffan Tillander, the Head of Administration and Consular Affairs, the applicant explains the reason for the delay in filing the application and states, inter alia, that: it was necessary for the applicant to conduct internal consultations to access the import and purport of this Court's judgment so as to make an informed decision to challenge the same before the Supreme Court; that in the course of the said internal consultations, the applicant resolved on 3rd June 2020 to withdraw its instructions from the firm of Hamilton Harrison & Matthews advocates, and retain the firm of Messrs. Mohammed Muigai LLP; that this change of instructions required time to allow the applicant's files, documents and correspondence to be handed over to the new firm, which was done on 8th June 2020; thereafter the applicant's advocates engaged this Court's registry for the supply of the record of proceedings which had not been availed as at the date of filing this application, despite payment of the assessed court fees for the same.
8. The application is opposed by the respondents. The 1st respondent, Lucy Muingo Kusewa, states in her replying affidavit that she was employed by the applicant as the Operations Controller since January 2012; that on 29th September 2014 the applicant announced that it would restructure its operations and relocate some of the operations of the regional office where she was serving in Nairobi to Addis Ababa and Stockholm, which would render her services redundant; that she demanded her terminal dues but the applicant refused to pay and was therefore forced to institute proceedings before the ELRC; that although the applicant challenged the court's jurisdiction, the trial court overruled the preliminary objection and subsequently decided the matter; and the applicant's appeal to this Court on the question of jurisdiction was equally dismissed.
9. The 1st respondent further contends that the matter herein involves the jurisdiction of the ELRC to hear and determine an employment dispute between the two parties, and that the issues in the matter are limited to the parties only and do not transcend the circumstances of the dispute; that the issues of general public importance raised by the applicant do not meet the threshold since they have been subject of litigation before various courts in this country and do not raise important points of law that call for clarification by the Supreme Court.
10. Regarding delay in filing the application, the 1st respondent states that the applicant should have filed the application for certification and leave to appeal within 14 days of the date of delivery of the impugned judgment, but the application for extension of time was filed almost four (4) months later,



on 19th August 2020, despite the fact that the applicant's current advocates were instructed on 3rd June 2020. In her view, the applicant has not explained the delay and does not therefore deserve extension of time.

11. This application came up for hearing on 9th July 2025 and pursuant to directions given by the Court, it was disposed of by way of written submissions without any appearance by counsel. I have considered the application, the affidavits and all the submissions filed by the parties. As stated earlier, this ruling is in respect of the prayer for extension of time only, which ordinarily is a single judge matter. Under the Rules of this Court, the rest of the prayers such as stay of proceedings in the trial court and certification that the matter raises a question of general public importance on a matter of law, and the grant of leave to appeal to the Supreme Court can only be handled by a 3-judge bench.
12. The Supreme Court in *Nicholas Kiptoo Arap Salat vs IEC & 7 others* [2014] eKLR enunciated the applicable principles in an application for leave to appeal out of time. The Court stated:

“The underlying principles a court should consider in exercise of such discretion include:

 - a. 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;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay.”
13. It is not in dispute that an application for leave to appeal to the Supreme Court ought to be made within 14 days from the date of delivery of this Court's judgment. This Court delivered the impugned judgment on 24th April 2020. The said period therefore expired on 9th May 2020 or thereabout. The application for extension of time was filed about 79 days out of time.
14. The affidavit of Ronald Mugisi Makokha advocate, of the firm of Messrs. Mohammed Muigai LLP, and that of Jan Staffan Tillander have explained in considerable detail the reasons that resulted in the delay in filing the application. Given the nature of the dispute, and the fact that the applicant had decided to change its advocates, and the correspondence that took place between the applicant's advocates following the delivery of the impugned judgment, I do not think that the delay is inordinate. I also do not think that the respondents will be prejudiced if the orders sought are granted.
15. Consequently, I am inclined to exercise my discretion in favour of the applicant. I hereby extend time for the applicant to file the notice of motion for the certification and leave to appeal to the Supreme Court of Kenya against the judgment and orders of this Court dated 24th April 2020. The application should be filed within 14 days from the date hereof.

The costs of this application shall be borne by the applicant.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY 2025.



D. K. MUSINGA (PRESIDENT)

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

