



REPUBLIC OF KENYA



KENYA LAW
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**Mutua v Fly Air Limited (Civil Application E516 of 2024)
[2025] KECA 1298 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1298 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E516 OF 2024
DK MUSINGA, JA
JULY 18, 2025**

BETWEEN

ROBIN MUTUKU MUTUA APPLICANT

AND

FLY AIR LIMITED RESPONDENT

(Being an application for stay extension of time to file and serve the memorandum of appeal and record of appeal out of time in an intended appeal against the Judgment of the Employment and Labour Relations Court at Nairobi (D.K. Njagi, J.) dated 22nd November 2023 in ELRC Cause No. 1525 of 2028)

RULING

1. The applicant's notice of motion dated 1st October 2024 seeks grant of leave to the firm of Eboso & Co. Advocates to come on record for the applicant and extension of time for the applicant to file a memorandum and record of appeal from the decision of the Employment and Labour Relations Court (ELRC) at Nairobi Cause No. 1525 of 2018.
2. In his affidavit in support of the application, the applicant states, inter alia, that on 14th November 2018 he filed a claim for wrongful dismissal and unfair termination against the respondent before the ELRC; that the matter was heard and judgment thereon delivered on 22nd November 2023; that being dissatisfied by the said judgment he filed a notice of appeal dated 27th November 2023; that on 22nd November 2023 he applied for a certified copy of the judgment and proceedings; that the proceedings were collected on 12th March 2024 and a certificate of delay issued on 24th April 2024, and by that time the statutory period for filing a memorandum and record of appeal had lapsed.
3. The applicant further states that there was a delay of 111 days in the processing of the typed proceedings; that he was unable to find the advocate previously instructed to file the appeal after the advocate moved offices and he was unable to trace him through his telephone number; that the



intended appeal has high chances of success, and no prejudice will be occasioned to the respondent if the application is allowed.

4. The respondent has opposed the application through a replying affidavit sworn by Joseph Ngava, its General Manager. He states, inter alia, that the delay in filing the application has not been sufficiently explained; that the applicant has not demonstrated that he made diligent attempts to reach his advocates; that the delay in filing the appeal is inordinate; that the proposed appeal has no chances of success; and that the respondent will be prejudiced if the application is allowed.
5. This application was canvassed by way of written submissions only on 9th July 2025 as earlier directed by the Registrar, but it appears that the respondent did not put in its submissions. I have however considered the application and the affidavits on record.
6. The factors that guide this Court in an application for extension of time include the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, among others. See *Paul Musili Wambua v Attorney General & 2 Others* [2015] eKLR.
7. Although the length of the delay is fairly long, I am satisfied that the same has been well explained by the applicant, particularly the long time that it took him to get the trial court's proceedings. The certificate of delay issued on 24th April 2024 speaks for itself.
8. Having perused the impugned judgment and the draft memorandum of appeal, I am satisfied that the intended appeal is not frivolous. The respondent has only stated that it will be prejudiced if the application is allowed, but the nature of the alleged prejudice has not been explained. To the contrary, given the circumstances that caused the delay in filing the memorandum and record of appeal, and the nature of the intended appeal, I think the applicant will be more prejudiced than the respondent if he is not allowed to exercise his constitutional right of appeal.
9. I am inclined to exercise my discretion in favour of the applicant, which I hereby do. Consequently, I grant leave to the firm of Eboso & Co. Advocates to come on record for the applicant and extend time to file the memorandum and record of appeal as sought. The same should be filed and served within 14 days from the date hereof.

The costs of the application shall be in the appeal.

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.

