



REPUBLIC OF KENYA



**Rai Plywoods (K) Limited v Kamau (Civil Application
E025 of 2024) [2024] KECA 841 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KECA 841 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E025 OF 2024**

**JW LESSIT, JA
JULY 19, 2024
(IN CHAMBERS)**

BETWEEN

RAI PLYWOODS (K) LIMITED APPLICANT

AND

PAUL MUHUHA KAMAU RESPONDENT

(Being an application for extension of time to file and serve a Notice of Appeal from the Judgment and Decree of the Employment and Labour Relations Court at Eldoret (Onyango, J.) dated and delivered on 7th March 2024 in ELRC Cause No. E008 of 2023.)

RULING

1. Before this Court is an application dated 20th May 2024 brought by the applicant pursuant to, inter alia, Rules 4 and 49(1) of the *Court of Appeal Rules*, 2022. Rai Plywoods (K) Limited, hereinafter the applicant seeks, inter alia, orders that this Court be pleased to extend the time within which the applicant is to file and serve a notice of appeal, a memorandum of appeal, and a record of appeal against the judgment and decree of the Employment and Labour Relations Court (Onyango, J.) dated and delivered on 7th March 2024 in ELRC Cause No. E008 of 2023.
2. The instant application is supported by the grounds set out on the face of the application together with those found in the supporting affidavit of Arun Kumar Singh, Financial Controller of the applicant's company dated on the even date. The applicant attributes the delay in filing a notice of appeal first, to the mistake of its former advocate on record, notifying him of the entry of the impugned judgment on 13th March 2024 as a result of which the applicant was under the belief that it had until 27th March 2024 to prefer an appeal which was not the case as time to file the Notice of Appeal lapsed on 21st March 2023. The applicant deposed that it changed its legal representation to the current advocate on 25th March 2024 and a complete handover of its file from its former advocate to its current advocate



was done on 6th May 2024. He blamed the lack of a proper and efficient handover of its file from its former advocate to the new advocate he instructed for the further delay in filing the Notice of Appeal.

3. The applicant argues that while the delay is sincerely and profusely regrettable, is not ordinate. Further, that the delay as explained was unintentional and in the circumstances, the consequences thereof should not be visited upon it who is aggrieved and is desirous of appealing against the impugned judgment.
4. The applicant also avers that it has an arguable appeal with reasonable chances of success as can be seen in the draft memorandum of appeal annexed to the supporting affidavit.

The applicant faults the learned judge on, inter alia, grounds that she erred in law and in fact; in failing to appreciate the fact that the respondent being employed as a senior staff was not entitled to gratuity unlike other non-senior staff that were entitled to gratuity, in failing to appreciate that the respondent having been employed in the year 1994 was not compulsorily entitled to an employment contract since the *Employment Act*, 2007 does not have a retrospective effect; and in failing to appreciate that not paying gratuity to an employee of another cadre that resigns or retires is not akin to discrimination or inequality.

5. Lastly, the applicant avers that the respondent will not be prejudiced if the applicant is granted the orders sought unlike the applicant who will run an imminent risk as the respondent shall proceed the execution process of the impugned judgment thus rendering its intended appeal nugatory.
6. The application is unopposed. The respondent has not filed any response to the application despite service with the hearing notice on the 1st July 2024.
7. I have considered this application and the explanation given for the delay on the face of the application and those in the supporting affidavit. Rule 4 of the *Court of Appeal Rules* governs the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the *Rules* for the doing of any act authorized or required by the *Rules*. It gives the Court unfettered discretion to

“extend the time limited by these Rules, or by any decision of the Court or of a superior Court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act...,”

on such terms as it thinks just.

8. In *Leo Sila Mutiso v Helen Wangari Mwangi* [1999] 2 EA, this Court held as follows:

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

9. The applicant has explained the reason for the delay which was caused by the advocates delay in communicating the outcome of the judgment, giving the applicant the mistaken belief that it had more time to file the appeal. That further delay was caused by the delay in handing over the file from the former to the current advocates. I find the explanation plausible and satisfactory in the circumstances. Apart from the explanation, the delay involved is not inordinate. The judgment was delivered on the 7th March 2024. The notice of appeal should have been filed within 14 days, that is, by 21st March 2024.



The applicant would then have had 60 days to file the record of appeal. Looking at the totality of the facts, I find that the delay involved in this case is not inordinate. In addition, the respondents have not opposed the application.

10. The upshot is that the application dated 20th May 2024 is allowed as follows:
1. Extension of time to file and serve the notice of appeal, record of appeal and the memorandum of appeal is hereby granted;
 2. The applicant do file the notice of appeal, record of appeal and the memorandum of appeal within 14 days of today's date;
 3. The applicant do serve its notice of appeal, record of appeal and the memorandum of appeal within 14 days from the date of filing the same;
 4. Costs of this application be costs in the appeal.

DATED AND DELIVERED AT ELDORET THIS 19TH DAY OF JULY, 2024.

J. LESIIT

JUDGE OF APPEAL

I certify that this is a true copy of the original

signed

DEPUTY REGISTRAR

