



REPUBLIC OF KENYA



**Kabarak University v Chelagat (Civil Application E114 of 2023)  
[2024] KECA 1525 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1525 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E114 OF 2023  
FA OCHIENG, JA  
OCTOBER 25, 2024**

**BETWEEN**

**KABARAK UNIVERSITY ..... APPLICANT**

**AND**

**REBECCA JEBICHI CHELAGAT ..... RESPONDENT**

*((An application for extension of time to lodge a notice of appeal against the judgment of the Employment and Labour Relations Court at Nakuru (D. Nderitu, J.) delivered on 16th March and rectified on 23rd March 2023 in ELRC Case No. 28 of 2020))*

**RULING**

1. By an application dated 13<sup>th</sup> December 2023, the applicant has asked the court to extend the time for lodging the notice of appeal against the judgment which was delivered on 16<sup>th</sup> March 2023, and which was rectified on 23<sup>rd</sup> March 2023.
2. On 16<sup>th</sup> March 2023 the learned trial Judge held that the respondent's contract of employment had been unfairly terminated by the applicant. In the circumstances, the court awarded compensation to the respondent, in the sum of Kshs. 2,132,736.
3. However, upon the realization that he had made an arithmetic error when computing the sum awarded as compensation, the learned trial Judge rectified the sum and reduced it to Kshs. 1,977,407.20. The said rectification was conducted suo moto, pursuant to Rule 34 of the Employment and Labour Relations Court Rules (Procedure) Rules, 2016.
4. Being dissatisfied with the judgment, the applicant lodged a notice of appeal dated 23<sup>rd</sup> March 2023. Nonetheless, the said notice of appeal was not served upon the respondent.
5. On 3<sup>rd</sup> May 2023, the respondent herein lodged an application, seeking to have the notice of appeal struck out.



6. After hearing the said application, the court delivered its Ruling on 8<sup>th</sup> December 2023, through which the notice of appeal dated 23<sup>rd</sup> March 2023 was struck out.
7. The applicant was still desirous of lodging an appeal, and it therefore lodged the current application, hoping that the court would grant it an extension of time to file the requisite notice of appeal.
8. The applicant expressed the view that its intended appeal had high chances of success and that it was only fair to grant it an opportunity to pursue the intended appeal.
9. In the opinion of the applicant, if the court did not grant it the opportunity to lodge the intended appeal, the applicant would have been condemned unheard.
10. At the same time, the applicant says that the respondent would not be prejudiced if the application was allowed, as both parties would be accorded a hearing, which would enable the court to arrive at a just and conclusive determination of the dispute.
11. In answer to the application, the respondent filed a replying affidavit. In a nutshell, the respondent drew the attention of the Court to the steps which had been taken in the proceedings, from the date when the applicant lodged the first notice of appeal, until the date when the court struck out the said notice of appeal.
12. The respondent was convinced that the application herein was no more than a deliberate attempt to ensure that she did not get to enjoy the fruits of the judgment which was delivered way back, in March 2023.
13. It was the understanding of the respondent that this Court had already rejected the applicant's explanation for the delay in lodging the notice of appeal.
14. The respondent further pointed out that the documents annexed to the applicant's supporting affidavit did not bear the Court's stamp. In light of that omission, the respondent asked the Court to have the annexures expunged from the record.
15. By way of a rebuttal, Mr. Mutai, the learned advocate for the applicant emphasized that the original documents bore all the markings which verify that they had been duly lodged in court.
16. Secondly, counsel noted that the applicant's reason for lodging the current application was that the one filed earlier had been struck out.
17. The court then inquired from Mr. Ndichu, learned advocate for the respondent, if the documents filed by the applicant had been served upon the respondent, by way of email.
18. The answer was in the affirmative.
19. It then became apparent to the court that the respondent's complaint was attributable to a deficit in the understanding of how documents which had been filed electronically are "marked" by the Court, to verify that the same were duly lodged in Court.
20. Traditionally, each document would be filed in court, manually.  
It would be delivered to the registry where an assessment would be carried out to determine the fees payable. Each document would be endorsed with the "stamp" of the particular court where it had been lodged.
21. However, it was only after payment had been made for each such document; and a receipt was duly issued, that the document was deemed as filed.



22. However, electronic filing is conducted remotely. No documents are carried physically to the court registry, for either assessment of court fees or endorsement with the court stamp.
23. Assessment of court fees is conducted electronically, without any physical intervention by someone at the registry.
24. When the person lodging the document is notified of the fees payable, he is required to remit payment electronically.
25. The fact of filing a document in court is now verifiable from the information inserted electronically by the system, and the said information is to be found along the left-hand side of the document.
26. For instance, in this case, the replying affidavit was lodged on 24<sup>th</sup> April 2024, by Raydon Mwangi & Associates Advocates. The document was filed at 09:29:27+03; and the court fees of Kshs. 150/- was fully paid.
27. I trust that each party or counsel who hitherto did not know how to verify whether or not a document had been filed, will henceforth know how to go about getting the requisite information on the filing of pleadings.
28. Reverting to the issues raised in the application, I find that the notice of appeal dated 23<sup>rd</sup> March 2023 was not struck out because it had been filed late. The respondent's contention to that effect is without foundation.
29. At paragraph 17 of the ruling dated 8<sup>th</sup> December 2023, the Court held as follows;

“There has been an inordinate delay in effecting service of the notice of appeal, and there has been no attempt made by the respondent to seek any orders which could regularize the default.”
30. Following the striking out of the notice of appeal dated 23<sup>rd</sup> March 2023, there is no notice of appeal on record.
31. That explains why the applicant has asked this Court to extend time for filing a notice of appeal.
32. Rule 4 of the Court of Appeal Rules provides that:

“The Court may, on such terms as it thinks just, by order 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, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
33. The law does not provide for a maximum or minimum period of delay. However, a prolonged and inordinate delay is more likely than not to disentitle the applicant to leave. Likewise, the reason or reasons for the delay must be reasonable and plausible. In the case of Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR, this Court stated that:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”



- 34. In my considered view, the explanation tendered by the applicant for the delay in filing the current application is plausible. I so hold because the applicant could not have sought an extension of time to file a notice of appeal whilst the earlier notice of appeal was still subsisting. It was only after the court struck out the notice of appeal dated 23<sup>rd</sup> March 2023, that it became necessary to seek the intervention of the court, in order to be able to file a fresh notice of appeal.
- 35. I further find that the respondent has, for a considerable period, been aware that the applicant was intent on challenging the judgment, through an appeal. Therefore, I find no merit in the respondent’s contention, that the current application was simply lodged with a view to frustrating her efforts to reap the fruits of the judgment.
- 36. In conclusion, I find that the application is merited. I therefore grant to the applicant an extension of 10 days from today, to file and serve its notice of appeal.
- 37. As regards the costs of the application, I order that each party shall pay his or her own costs. I so order because I cannot find any justification in loading costs upon the respondent when the matters which gave rise to the need for the orders granted herein, were wholly attributable to the applicant and its advocates.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF OCTOBER, 2024.**

**F. OCHIENG**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

