



**Kenya Aviation Workers Union v Kenya Airways Limited (Civil Application E198 of 2023) [2024] KECA 1411 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1411 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E198 OF 2023  
K M'INOTI, JA  
OCTOBER 11, 2024**

**BETWEEN**

**KENYA AVIATION WORKERS UNION ..... APPLICANT**

**AND**

**KENYA AIRWAYS LIMITED ..... RESPONDENT**

*(Application for extension of time to appeal against the judgment and decree of the Employment & Labour Relations Court at Nairobi (Rika, J.) dated 10th June 2022 in ELRC No. 1448 of 2015)*

**RULING**

1. The notice of motion before the Court is taken out by the applicant, Kenya Aviation Workers Union (KAWU). Due the confusion apparent in the application as regards who the applicant is, I shall refer to the applicant as KAWU, because that is exactly what the notice of appeal indicates. The notice of motion is undated but is supported by an affidavit sworn by Winnie Kasyoka Mumo (Ms. Mumo) on 16<sup>th</sup> May 2023. The court system indicates that the application was filed on 17<sup>th</sup> May 2023. In the application, KAWU seeks extension of time to appeal from the judgment of the Employment and Labour Relations Court (ELRC) at Nairobi (Rika, J.) dated 10<sup>th</sup> June 2022. The motion is therefore made a few days shy of one year from the date of the judgment.
2. By way of background, on 18<sup>th</sup> August 2015, KAWU, in its capacity as a trade union, filed a claim against the respondent in the ELRC, claiming damages for wrongful dismissal of one of its members, Ms. Mumo. That claim was heard and dismissed by Rika, J. on 10<sup>th</sup> June 2022.
3. On 14<sup>th</sup> June 2022, KAWU lodged a notice of appeal. It is important to point out that the notice of appeal was filed by KAWU as the claimant and expressly stated that it was the KAWU which was aggrieved by the judgment of the ELRC. There is no notice of appeal on record by Ms. Mumo.



4. That notice of appeal indicates that it was served upon the respondent electronically on 26<sup>th</sup> June 2022. While the notice of appeal was filed within 14 days from the date of the judgment as required by the Court of Appeal Rules, it was served on the respondent outside the prescribed 7 days.
5. By a letter dated 14<sup>th</sup> June 2022 and received in court on 23<sup>rd</sup> June 2022, Ms. Mumo, claiming to be the claimant contrary to what is indicated in the notice of appeal, applied for certified copies of proceedings and judgment. That application was made within the 30 days from the date of the judgment and was duly copied to the respondent’s advocates as required by the rules.
6. KAWU does not explain what happened between the time of lodging the notice of appeal on 14<sup>th</sup> June 2022 and the filing of the current application on 17<sup>th</sup> May 2023. Instead, it is Ms. Mumo, claiming to be “the applicant”, who has sworn an affidavit stating that she has been out of employment; that around the time of the impugned judgment her son was taken ill and required hospitalisation and expensive medication; and that she was unable to raise the fees demanded by the advocate to pursue the appeal.
7. Ms. Mumo further deposes that the intended appeal is arguable; and that the ELRC misapprehended the evidenced and arrived at a manifestly erroneous decision.
8. The application is opposed by the respondent vide a replying affidavit sworn by Anazett Pacy Sifuna on 22<sup>nd</sup> January 2024. The respondent maintains that KAWU as a registered trade union has legal capacity to sue in its name and it was in that capacity that it lodged the claim in the ELC and the notice of appeal. It further avers that it is only the KAWU, which filed the notice of appeal, which has capacity to apply for extension of time, not Ms. Mumo who is neither the applicant nor the intended appellant.
9. It is the respondent’s further contention that KAWU has not explained the inordinate delay in filing the appeal; that the intended appeal has no merit; and that the respondent stands to suffer great prejudice in light of the time this litigation has been in court since 2015.
10. Only the respondent filed its written submissions dated 19<sup>th</sup> July 2024 in which it has reiterated its position as set out above. Although I would have been entitled to dismiss this application on account of KAWU’s failure to file submissions as directed, I have before me sufficient material on the basis of which I can determine this application on its merits.
11. I have considered the application. Under rule 4 of the [Court of Appeal Rules](#) to the Court has discretionary and unfettered power to extend time. That discretion has to be exercised judiciously and upon reason rather than arbitrarily or capriciously. In [Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others](#) (*supra*) the Supreme Court stated as follows on the power to extend time:
  - i. 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.
  - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
  - ii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis...”
12. And in *Leo Sila Mutisov Rose Hellen Wangari Mwangi*, CA No. Nai. 255 of 1997, identified some of the relevant considerations in determining whether or not to extend time, as follows:

“It is now 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”.

(See also *Fakir Mohamedv Joseph Mugambi & 2 Others*, CA. No. Nai 332 of 2004 and *Imperial Bank Ltd (In Receivership) & Another v Alnashir Popat & 18 Others* [2018] eKLR).

13. From the record, the judgment of the ELRC was delivered on 10<sup>th</sup> June 2022. The application before the Court for extension of time was made on 17<sup>th</sup> May, 2024, some 11 months later. There is no indication whether KAWU has obtained the proceedings or whether it has already filed the appeal. I find this delay of close to a year to be clearly inordinate.
14. What is the explanation for the delay? This is a critical question because even delay that is on the face of it inordinate, may be reasonably and adequately explained. The policy of the law is that where a party has been prevented by good reasons from meeting the prescribed timelines, such party should not be shut out of Court. However, where the delay is not accounted for, or where it has arisen from sheer dilatoriness on the part of a party or its counsel, the Court will not extend time because the prescribed timelines are not arbitrary aberrations; rather, they are intended to actualise manifest constitutional values on expeditious resolution of disputes.
15. KAWU, which filed the notice of appeal in its name and is the intended appellant has offered absolutely no explanation for the delay. Instead, Ms. Mumo, who is not the intended appellant according to the notice of appeal and who has not filed a notice of appeal in her name, has given reasons relating to her personal circumstances. However, in the application before me the explanation that is required for failure to comply with the timelines must come from KAWU, which is the intended appellant.
16. By dint of section 21 of the *Labour Relations Act*, KAWU as a duly registered trade union, is a body corporate with capacity to sue and be sued in its own name. KAWU filed the claim in the ELRC in its name, as well as and the notice of appeal on record, and KAWU is therefore the intended appellant.
17. Under rule 77(1) of the *Court of Appeal Rules*, if Ms. Mumo wished to appeal against the judgment of the ELRC as a person directly affected by it, she was entitled to file a notice of appeal in her name. As I have indicated, in the application before court, the intended appellant and the applicant is KAWU. How Ms. Mumo’s personal circumstances come into play to explain delay in an intended appeal by KAWU is not readily apparent, particularly when it is taken into account that as a member of the Trade Union, she is entitled to representation at the Union’s cost.
18. There being no explanation by KAWU for the inordinate delay, I do not find any merit in this application for extension of time. The respondent points out at its possible prejudice in continuation of litigation that has been in court for almost ten years, which I find to be reasonable. At this point, the Court cannot pronounce itself definitively on the prospects of the KAWU’s appeal.
19. Ultimately, in the absence of any explanation why KAWU did not abide by the prescribed timelines, I do not find basis to exercise discretion in its favour. Accordingly, the undated notice of motion filed on May 17, 2023 is hereby dismissed. Taking into account the circumstances of the case, I direct each party to bear its own costs.

**DATED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF OCTOBER, 2024.**

**K. M’INOTI**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

