



REPUBLIC OF KENYA



**KENYA LAW**  
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**Riley Falcon Security Services v MCrege (Civil Application  
E099 of 2023) [2023] KECA 1373 (KLR) (17 November 2023) (Ruling)**

Neutral citation: [2023] KECA 1373 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E099 OF 2023  
HA OMONDI, JA  
NOVEMBER 17, 2023**

**BETWEEN**

**RILEY FALCON SECURITY SERVICES ..... APPLICANT**

**AND**

**CHARLES AMOLO MCREGE ..... RESPONDENT**

*(Being an application for extension of time to deem the already filed Notice of Appeal, as having been properly filed and served within time from the judgment of the Employment and Labour Relations Court at Kisumu (C. Baari, J.) dated 13<sup>th</sup> July 2023 in ELRC Cause No. E005 of 2022)*

**RULING**

1. The notice of motion dated August 2, 2023 brought pursuant to rule 4 *Court of Appeal Rules*, 2010 seeks the that this Court extends the time limited to file a Notice of Appeal; and that the Notice of Appeal dated 26<sup>th</sup> July 2023, be deemed as properly filed. The application is supported by a supporting affidavit of even date sworn by Sharon Achien’g Omollo.
2. The respondent had filed a claim against the applicant in ELRC No. E005 of 2022 before the Employment and Labour Relations Court. The matter was heard, and the claim dismissed on 13<sup>th</sup> July 2023, with no orders on costs.
3. The applicant was aggrieved by this omission on costs; and on 26<sup>th</sup> July 2023, it instructed the advocate on record to file an appeal. The Notice of Appeal, and the letter bespeaking the proceedings, were prepared, but due to an oversight on the part of the applicant’s advocate, they were not filed on 27<sup>th</sup> July 2023, which was the last day of filing. Instead, they were filed on 28<sup>th</sup> July 2023. Drawing from the decision in *Imperial Bank (in receivership) and Another v Alnasir Popat* [2018] eKLR, it is submitted that the lapse of one day was innocent and inadvertent; does not constitute inordinate delay. Emphasis



is laid on the position stated by this court, differently constituted, stated in Imperial Bank case (supra) that:

“some of the considerations to be borne in mind while considering an application for extension of time, include the length of time involved; the reason for the delay; the possible prejudice, if any that each party stands to suffer depending on how the Court exercises its discretion; the conduct of the parties; the need to balance the interest of a party who has a decision in its favour, against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need for timely resolution of disputes; public interest issues implicated...”.

The applicant argues that the appeal is not frivolous, and it is keenly intent on pursuing the appeal.

4. Although the respondent filed a notice to act in person; he has not filed any response to the application; nor has he filed any written submissions. I take note that the period of delay was just one day, and it is explained as the normal lapse any human being is bound to occasionally suffer. Indeed, the Notice of appeal bears the last date for filing, and upon realizing the error of omission, counsel took the quickest step to try and make amends.
5. The applicant has demonstrated a desire to pursue the appeal, and there being no response by the respondent to even suggest that in allowing the orders sought, he will be greatly prejudiced, I am satisfied that the applicant is deserving of a favourable exercise of discretion, and do hereby grant the applicant leave to file the Notice of appeal out of time. The filed Notice of Appeal dated 26<sup>th</sup> July 2023, be and is hereby deemed as properly filed and served. I make no orders on costs.

**DATED AND DELIVERED AT KISUMU THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

