



**Gituanja v Spread Eagle Ltd (Cause E963 of 2022)
[2025] KEELRC 1958 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1958 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E963 OF 2022
BOM MANANI, J
JUNE 30, 2025**

BETWEEN

JAMES KIBATHI GITUANJA CLAIMANT

AND

SPREAD EAGLE LTD RESPONDENT

RULING

1. On 19th September 2024, the court granted the Respondent leave to amend its Statement of Defense within 14 days of the said order. Similarly, it (the court) granted the Claimant leave to file a reply to the amended Statement of Defense within 14 days of service of the amended Statement of Defense.
2. The Respondent did not file the amended Statement of Defense within the aforesaid timelines. From the court's e-filing platform, it appears that the instrument was lodged on 22nd October 2024.
3. If the ruling of the court is anything to go by, the last day that the instrument was to have been filed was 3rd October 2024. As such, it was presented approximately nineteen (19) days outside the stipulated timelines.
4. When the matter came up for mention on 29th October 2024, the Claimant's lawyer alerted the court that the Respondent had filed the amended Statement of Defense outside the timelines which had been set in the ruling. As such, she intimated that she will be applying to strike out the pleading.
5. In view of the foregoing, the court listed the matter for mention on 25th November 2024 in order to confirm whether the motion to strike out the amended Defense had been filed. The parties were accordingly advised.
6. On 25th November 2024, counsel informed the court that two applications had been filed. The first one dated 21st November 2024 seeks to enlarge time for filing the impugned amended Statement of



- Defense and for the amended Statement of Defense on record be deemed as properly filed. The second one dated 25th November 2024 seeks to strike out the improperly filed amended Statement of Defense.
7. The court asked the parties to try to resolve the standoff on the matter amicably. As such, it relisted the cause for mention on 5th December 2024 in a bid to give room for discussions on the applications.
 8. As the record shows, the parties did not find a middle ground to stalemate. As such, the court directed that the applications be heard simultaneously through written submissions.
 9. According to the Respondent's advocates, they did not file the amended Statement of Defense within the timelines that were set by the court because of the challenges they ran into whilst trying to access the court's e-filing platform. They contend that around the time the amended defense was to be filed, the e-filing platform was experiencing a downturn, a matter which rendered it difficult to complete the filing process. The Respondent avers that this problem persisted for a while prompting the court to send out notices to the public informing it (the public) about the challenge.
 10. In his response, the Claimant avers that the reasons given by the Respondent for not filing the amended Statement of Defense within the timelines that were set by the court are incredulous and fictitious. He avers that the Respondent had a duty to demonstrate that it was prevented from filing the amended defense within fourteen (14) days of the court's order because of factors that were beyond its control. However, he contends that it (the Respondent) has not done so. He asserts that the Respondent has not demonstrated that the court's e-filing platform had challenges as asserted.
 11. The Claimant contends that the delay by the Respondent to file the amended defense has been inordinate and is unjustified. He contends that it is unlikely that the downturn in the court's e-filing system lasted for the period which the Respondent took to upload the instrument.
 12. The Claimant avers that the Respondent's overall conduct in the suit has been less than desirable and demonstrates its reluctance to have the matter prosecuted expeditiously. He contends that the Respondent did not file its defense to the cause in time forcing him to accommodate this delay by granting it (the Respondent) a consent to regularize its papers. He avers that despite this accommodation, the Respondent still neglected to file its trial documents as required by law occasioning further delay in the matter. He believes that the Respondent's failure to file the amended defense in time is part of its wider scheme to delay the case.
 13. The Claimant contends that enlargement of time to present court processes out of time is not a matter of right but an equitable remedy. As such, he avers that the court should only grant the relief in deserving cases.

Analysis

14. The court agrees with the Claimant's lawyer's submission that extension of time to file documents in proceedings out of time is not a matter of right. The court further agrees that this relief should only be granted in deserving instances.
15. That said, the court is also alive to the duty to ensure that no person is removed from the seat of justice except as a last resort. As such, it (the court) should endeavor to grant parties to a suit the opportunity to ventilate their respective cases without unduly stifling either of them.



16. In articulating this view, the High Court in the case of *Stecol Corporation Limited v Susan Awuor Mudemb* [2021] eKLR expressed itself on the matter as follows:-

“The ultimate goal and purpose of the justice system is to hear and determine disputes fully. It follows that no person who has approached the court seeking an opportunity to ventilate their grievances fully should be locked out.”

17. Although parties to a case may sometimes commit missteps, it has been observed that a court of law should be hesitant to impose on them penalties whose effect is to remove them from the seat of justice unless this is a measure of last resort. In articulating this position, Apaloo JA observed as follows in the case of *Philip Keiptoo Chemwolo & another vs. Augustine Kubende* [1986] eKLR:-

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits.

I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline.”

18. Expressing a similar view in the case of *Belinda Murai & 9 Others vs. Amos Wainaina* [1979] eKLR, Madan J stated as follows:-

“The door of justice is not closed because a mistake has been made by a person of experience who ought to have known better. The court may not forgive or condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate.”

19. The Respondent’s advocates blame the delay in filing their client’s amended defense on the challenges which they allegedly experienced with the court’s e-filing system. However and as the Claimant’s lawyer has rightly pointed out, they have not presented cogent evidence to demonstrate that indeed they had the challenges that they have alluded to. As such and in the court’s view, the delay in presenting the amended Statement of Defense may have been occasioned by missteps on their part.
20. What the court has to grapple with is whether the Respondent should be deprived of the opportunity to file the amended Statement of Defense in order to effectively ventilate its case in the cause on account of this missteps. Having regard to the decisions that I have alluded to above, if the court were to do so, it will have effectively removed the Respondent from the seat of justice.
21. Such action will be draconian. It can only be resorted to as a measure of last resort.
22. In their submissions, the Claimant’s advocates contend that it was improper for the Respondent to have first filed the amended Statement of Defense before it sought to enlarge time to validate it. They contend that the Respondent’s actions were presumptive and should not be excused.
23. The Claimant’s lawyers rely on the Supreme Court case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR to advance the above argument. In the case, the Supreme Court observed that it is not proper for a litigant who wants to lodge an appeal out of time before the court to first lodge the purported appeal and then apply for leave to enlarge time. The court expressed the view that such appeal would be a nullity in law.



24. However, in the case of Charles Karanja Kiiru v Charles Githinji Muigwa [2017] eKLR, the Court of Appeal observed that the position expressed by the Supreme Court in the Nicholas Kiptoo Arap Korir Salat (supra) case was with respect to rule 53 of the Supreme Court Rules. Therefore, it was not of general application.
25. The Court of Appeal went further to hold that the decision by the High Court in the case of Charles Karanja Kiiru v Charles Githinji Muigwa (supra) to enlarge time to file the impugned appeal out of time and to deem it as properly filed pursuant to Order 50 rule 6 of the Civil Procedure Rules was legitimate since that provision permitted the Judge to enlarge time “upon such terms as the justice of the case may require...”. As such, it (the Court of Appeal) dismissed the challenge to the Judge’s ruling.
26. It is further noteworthy that although the Supreme Court in the case of Nicholas Kiptoo Arap Korir Salat (supra) struck out the purported appeal for having been filed out of time without leave, it nevertheless granted the Applicant leave to file a proper appeal within 14 days of its order. The court did not lock out the Applicant from the seat of justice but gave him the opportunity to ventilate his case through a proper appeal. In effect, even if this court were to take the route that was taken by the Supreme Court as aforesaid, it will still be entitled to grant the Respondent the opportunity to file a proper amended Statement of Defense after it has struck out the impugned document.
27. Applications for enlargement of time before the Employment and Labour Relations Court are made pursuant to rule 80 of the Employment and Labour Relations Court (Procedure) Rules, 2024 which provides as follows:-

“The Court may, upon application or on its own motion, extend any time prescribed under these Rules or such time as may be stipulated in an order of the Court.”
28. In my view, the above rule is sufficiently wide to permit the court to deem documents filed out of time as having been properly filed as long as it is in the interest of justice to do so. Having regard to the position expressed by the Court of Appeal in the case of Charles Karanja Kiiru v Charles Githinji Muigwa (supra) regarding the extend of application of the Supreme Court decision in the case of Nicholas Kiptoo Arap Korir Salat (supra), I am inclined to allow the application dated 21st November 2024 in order not to lock out the Respondent from filing its amended Statement of Defense. The converse is that the application dated 25th November 2024 fails.

Determination

29. The upshot is that the court allows the application dated 21st November 2024 and enlarges the time which was granted to the Respondent to file an amended Statement of Defense and the amended Statement of Defense that was filed on 22nd October 2024 is deemed as having been properly filed and served.
30. The Claimant is granted leave to file and serve his reply to the amended Statement of Defense within fourteen (14) days of this ruling.
31. The Claimant is granted costs of the application dated 21st November 2024.
32. The court dismisses the application dated 25th November 2024.
33. Each party shall bear own costs in respect of the application dated 25th November 2024.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF JUNE, 2025

B. O. M. MANANI



JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

