



**Winguards Security Limited v Mitema (Miscellaneous Application
E032 of 2025) [2025] KEELRC 1739 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1739 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E032 OF 2025**

SC RUTTO, J

JUNE 13, 2025

BETWEEN

WINGUARDS SECURITY LIMITED APPLICANT

AND

EVANS EGETA MITEMA RESPONDENT

RULING

1. Before this Court for determination is the Notice of Motion dated 12th February 2025, through which the Applicant seeks the following orders:
 1. Spent.
 2. THAT the Applicant be granted leave to file an appeal out of time against Judgment delivered on the 18th January 2024 in MCELRC E1350 of 2022 by Hon. Hosea M. Nganga (MR) and or the said appeal be admitted out of time.
 3. THAT this Honourable Court be pleased to stay execution of the Judgment delivered on the 18th January 2024 in MCELRC E1350 of 2022 by Hon. Hosea M. Nganga (MR) pending the hearing and determination of this application.
 4. THAT this Honourable court be pleased to stay execution of the Judgment delivered on the 18th January 2024 in MCELRC E1350 of 2022 by Hon. Hosea M. Nganga (MR) pending the hearing and determination of the appeal filed or to be filed in respect thereof.
 5. THAT this Honourable court be pleased to set aside the warrants of attachment and warrants of sale issued on 6th February 2025 against the Applicant herein.
 6. THAT the consent herein annexed and marked as KR1 be deemed as duly filed.
 7. THAT the costs of this application be in the cause.



2. The Application is premised on the grounds on the face thereof and the Supporting Affidavit of Kathambi Rwito, Advocate on record for the Applicant. Ms. Kathambi avers that on 11th September 2024, they were informed by the previous counsel on record for the Applicant that there is an Appeal in the matter by the Claimant's (sic) Counsel. They were then issued with instructions by the Applicant to appeal the matter. They wrote an email to the Claimant's (sic) counsel to furnish them with the case number and in turn, he informed them that he was no longer pursuing the Appeal.
3. According to Ms. Kathambi, there was a mix-up in two judgments and the Applicant herein thought that it had already settled the decretal amount in this matter.
4. That the Applicant has an arguable appeal with overwhelming chances of success and will suffer substantial loss and damage if the decree herein is executed pending hearing and determination of this Application and Appeal.
5. The Application is opposed through the Respondent's Replying Affidavit sworn on 2nd April 2025 by Willis Wetaba, its Advocate on record.
6. Mr. Wetaba avers that the Applicant attempted to negotiate this matter and only proceeded before this Court once the negotiations did not go its way. That there is no credible reason advanced and the application is not merited.
7. Mr. Wetaba has further termed the Application an abuse of the court process and has asked the Court to dismiss the same with costs.

Submissions.

8. Pursuant to the directions issued by the Court on 19th December 2024, the Application was canvassed by way of written submissions. The Court has given due consideration to the submissions filed by both parties.

Analysis and Determination

9. Having considered the Notice of Motion, the Respondent's Replying Affidavit, as well as the rival submissions, it is evident that the issue arising for determination at this juncture is whether time can be extended for the Applicant to file an Appeal.
10. Section 79G of the *Civil Procedure Act* provides for the time for filing appeals from subordinate courts as follows:

[79G] Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
11. In addition, Section 95 of the *Civil Procedure Act* states that where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.
12. Further, Rule 80 of the *Employment and Labour Court (Procedure) Rules, 2024* provides as follows: -

[80] 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.



13. In light of the foregoing, it is apparent that in considering an application for enlargement of time, the Court exercises discretionary power. Further to this, the power to extend time within which to file an appeal is an equitable relief. As such, the same is not granted as a matter of course but available to a deserving party upon sufficient reasons being given to the satisfaction of the court. Such was the determination by the Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR where the Apex Court further stipulated the following principles to guide Courts in exercising such discretion:
- a. 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;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;
 - c. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. Whether there will be any prejudice suffered by the Respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay; and
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
11. In the present case, the decision intended to be challenged was delivered on 18th January 2024. Accordingly, the prescribed time for filing the Appeal lapsed on or about 18th February 2024. However, it was not until 12th February 2025 that the Applicant rushed to Court and filed the instant Motion. By then, a period of almost one (1) year had lapsed since 18th January 2024, when the impugned Judgment was delivered.
11. It is this Court's view that the said delay is quite significant. As such, the Court has to determine whether the delay has been explained satisfactorily.
12. Explaining the reason for the delay, Counsel for the Applicant deposes in her Supporting Affidavit that there was a mix-up with respect to the awards in two related judgments which were delivered by the Court on 18th January 2024. In this regard, Counsel for the Applicant deposes that the Applicant thought it had settled the decretal amount in this matter.
11. In support of her assertion, Counsel annexed to her Supporting Affidavit copies of the email correspondence exchanged with Counsel, who was previously on record for the Applicant. In an email dated 12th September 2024, Mr. Emukule, the Applicant's erstwhile Counsel, indicated that it was their belief that when they attended Court, the figure that was read out in open court in ELRC Cause No. 1350 of 2022 was Kshs 37,434/= and not Kshs 491,580/=.
11. Mr. Emukule added that they believed the Court read one judgment in place of the other but the issue was noted and rectified at the registry without informing the parties as much. That it was based on this information that they advised the Applicant to make payment in ELRC Cause No. E1350 of 2022, since they did not appeal the award.
14. Having taken note of the reasons advanced by the Applicant for the delay in filing the Appeal, the Court is inclined to give the Applicant the benefit of doubt that they may have proceeded on a wrong



premise with respect to the awards in the two judgements delivered by the trial court on 18th January 2024. This is also bearing in mind that the Applicant's Counsel, Kathambi Rwito & Co. Advocates, were not on record when the matter proceeded at the trial Court.

15. To this end, I am persuaded that the Application seeking to file the Appeal out of time is merited.
16. With respect to the prayers for stay of execution pending hearing and determination of the Appeal, it is this Court's view that such an order cannot be granted at this juncture, seeing that the Applicant has just been granted leave to file an Appeal. This is yet to be done. As such, there is no basis upon which the Applicant can be granted an order staying execution pending appeal.
17. In the circumstances, the Application dated 12th February 2025 is allowed in terms of prayer 2 and the Applicant is hereby granted leave to file and serve a Memorandum of Appeal within 7 days from the date of the delivery of this Ruling.
18. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2025.

STELLA RUTTO

JUDGE

In the presence of:

Ms. Achieng instructed by Ms. Kathambi for the Applicant

No appearance for the Respondent

Millicent Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

