



**Mairura v Mesora Distributors Limited (Miscellaneous Application
E099 of 2025) [2025] KEELRC 2248 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2248 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E099 OF 2025**

**RC RUTTO, J
JULY 25, 2025**

BETWEEN

BOAZ OMBATI MAIRURA APPLICANT

AND

MESORA DISTRIBUTORS LIMITED RESPONDENT

RULING

1. What is before this Court for determination is a Notice of Motion which was amended on 29th April 2025. Through the amended Notice of Motion, the Applicant seeks the following orders:
 1. That leave be granted to the Applicant to file his Appeal out of time against the decision of Hon. Tom Mark Orlando PM delivered on 19th February 2025 in Milimani Chief Magistrates Court Employment Case Number E1090 of 2022 *Boaz Ombati Mairura v Mesora Distributors Limited*.
 2. That the costs of this Application to abide the outcome of the intended Appeal.
 3. Any other and further relief that this honourable Court may deem fit and just to grant in the circumstances.
2. The Application is premised on the grounds on the face thereof and the Supporting Affidavit of the Applicant herein, Boaz Ombati Mairura.
3. Grounds in support of the Motion are that judgment was delivered on 19th February 2025, awarding the Applicant Kshs. 16,858.00 being one month's salary in lieu of notice and costs of the suit. The Applicant avers that the delay in filing the Appeal out of time was due to an inadvertent mistake by his Counsel who failed to inform him on time of the decision of the court due to exigencies of work.
4. The Applicant has averred that the mistake of Counsel should not be visited upon an innocent litigant.



5. He further avers that a delay of 20 days in bringing the instant Application is not inordinate and the same is excusable. That further, he has an arguable Appeal with overwhelming chances of success.
6. The Respondent opposed the Application by filing Grounds of Opposition dated 12th May 2025, in which it contends that:
 1. The Application proceeds on the untenable premise that the delay in filing its Memorandum of Appeal was occasioned by exigencies of work without submitting any evidence to substantiate the allegation.
 2. The extension of time is not a right to a party. It is not an equitable remedy that is only available to a deserving party at the discretion of the court.
 3. The Application is supported by an affidavit sworn by an intended appellant who swears that he is aware of his counsel's alleged inadvertent mistake which is not supported by any evidence and neither has the said counsel sworn an affidavit to confirm his client's allegations.
 4. The Applicant has not explained the reason for delay in filing the appeal to the degree of satisfaction to warrant the exercise this court's discretion to grant the order to file the intended appeal out of time.
 5. The Respondent will be highly prejudiced if the orders sought are granted as the Respondent would be engaged in prolonged litigation the suit having been filed in 2022.

Submissions

7. Pursuant to the directions issued by the Court on 29th April 2025, the Application was canvassed by way of written submissions. The Court has considered the parties respective submissions.

Analysis and Determination

8. Evidently, the singular issue arising for determination is whether the Applicant should be granted leave to file an appeal out of time.
9. 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.
10. In terms of Section 95 of the *Civil Procedure Act*, the Court may, in its discretion, from time to time, enlarge any period which is fixed for the doing of any act prescribed or allowed by the Act, even though the period originally fixed or granted may have expired.
11. And further, Rule 80 of the *Employment and Labour Court (Procedure) Rules, 2024* provides as follows with respect to extension of time: -

(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.



12. What can be drawn from the foregoing statutory provisions is that in considering an application for enlargement of time, the Court exercises discretionary power.
13. The Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, enumerated the following principles to guide Courts in exercising discretion with respect to extension of time:
 - 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.
14. As can be discerned from the record, the decision the Applicant seeks to appeal was delivered on 19th February 2025, while the Applicant initially moved the Court through a Notice of Motion which was filed on 10th April 2025 and subsequently amended on 29th April 2025. Therefore, the intervening period is approximately 39 days. It is this Court's considered view that the period of delay is not too inordinate.
15. That said, the next question for determination is whether the Applicant has explained the delay to the satisfaction of the Court.
16. The main ground advanced by the Applicant for the delay in filing the Memorandum of Appeal within the prescribed timelines is that his Counsel inadvertently failed to inform him on time of the decision by the trial Court. In essence, the Applicant has attributed the delay to a mistake on the part of his Advocates.
17. The Court has given due consideration to the reason advanced by the Applicant for the delay in filing the Appeal and is inclined to give him the benefit of doubt. In so finding, the Court adopts the decision in the case of *Philip Chemwolo & Another v Augustine Kubende*, [1982-88] 1 KAR 103, that 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 heard on merit.
18. Accordingly, the Court is persuaded that the Application seeking to file the Appeal out of time is merited.
19. In the circumstances, the Applicant is hereby granted leave to file an appeal against the Judgment delivered on 19th February 2025 in MCELRC No. E1090 of 2022 – *Boaz Ombati Mairura v Mesora Distributors Limited by Hon. Tom Mark Orlando*, out of time.
20. Accordingly, the Applicant is to file and serve the Memorandum of Appeal within fourteen (14) days from the date of the delivery of this Ruling.



21. Having occasioned the instant Application, the Applicant will bear the attendant costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Mokuu for the Applicant

Ms Akello instructed by Mr. Okeche 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

