



**Westpalm Logistics Limited v Gwaro (Miscellaneous Case
E050 of 2025) [2025] KEELRC 2193 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2193 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
MISCELLANEOUS CASE E050 OF 2025**

JK GAKERI, J

JULY 24, 2025

BETWEEN

WESTPALM LOGISTICS LIMITED APPLICANT

AND

FLORENCE KEMUNTO GWARO RESPONDENT

RULING

1. Before the court for determination is the Applicant's Notice of Motion dated 1st July, 2025 file under Certificate of Urgency seeking Orders that: -
 1. Spent.
 2. Spent.
 3. Applicant be granted leave to file its appeal out of time.
 4. Filing of Record of Appeal be dispensed with and the lower court's file be availed in lieu to fast tract the appeal.
 5. Stay of execution of the Judgment of Hon. Dennis Matutu in MCELRC/E0207/2023 pending the hearing and determination of the appeal.
 6. Any other Orders the court may deem fit to further the ends of justice.
 7. Costs be in the cause.
2. The Notice of Motion is expressed under Article 50 and 159(2)(d) of the *Constitution* of Kenya, Sections 1A, 1B, 3A and 79G of the *Civil Procedure Act*, Order 42 Rule 6 and 7, Order 43 Rule 2, Order 51 Rule 1 and 3 of the *Civil Procedure Rule* and Rule 8 of the *Employment and Labour Relations Court (Procedure) Rules, 2024* and is based on the grounds outlined on its face and the Supporting Affidavit



sworn by Ceaser Argwings Kodhek on 30th June, 2025, who deposed that he was the sole director of the applicant and was yet to receive typed copies of proceedings after requesting for the same.

3. The affiant further deposed that the trial court failed to take account the provisions of Section 89 of the *Employment Act* on limitation of actions which is a jurisdictional issue and the trial court awarded the sum of Kshs.280,000 exclusive of interest and costs estimated at Kshs.116,000 and additionally was involved in MCCOMMSU/E390/2025 to evict a tenant from his property with attendant legal fees.
4. The affiant deposed that if temporary stay of execution was not granted pending hearing of the application and appeal, substantial loss would ensue and had met the threshold for grant of a stay having filed the same within reasonable time and had prepared a draft Memorandum of Appeal, was ready and willing to provide security as directed by the court and had an arguable appeal.

Respondent's case

5. By a Replying Affidavit sworn by Maurice Carlos Ouma Advocate, the respondents case is that the judgment sought to be appealed against was entered on 29th April, 2025 and the applicant had not demonstrated any reason why the appeal was not filed within time and the instant application was an afterthought, a scheme to frustrate the respondent.
6. That the reason for delay given was alien to the prevailing jurisprudence, as failure to secure certified copies of proceedings and judgment cannot prevent a party from filing an appeal on time, and was a hollow ground.
7. According to the respondent, the application was wanting in merit and was an abuse of the court process.

Applicant's submissions

8. Mr. Kodhek submitted that the instant application and the intended appeal were both about timelines which though justifiable and serve various purposes ought not obstruct the course of justice. That although the appeal had not been filed, the court had the discretion to grant leave to do so as there had been no inordinate delay, only two (2) months.
9. Counsel submitted that the intended appeal had merits based on the provisions of Section 90 of the *Employment Act*, which the trial court did not address and the applicant could be pardoned for the delay failing of the appeal.
10. According to counsel, the courts focus ought to be justice.
11. The respondent opted to rely on the Replying Affidavit exclusively.
12. The singular issue for determination is whether the application herein is merited.
13. Concerning extension of time to enable the applicant file an appeal out of, it is evident that the judgment sought to be appealed against was delivered on 29th April, 2025, about 2 months prior to the filing of the instant application as the applicant's counsel submitted.
14. Rule 18 of the *Employment and Labour Relations Court (Procedure) Rules* 2024, provides:

The court may if circumstances justify, extend the time prescribed for filing of an appeal or any document relating to an appeal.
15. In addition, the provisions of the *Civil Procedure Act* and the *Civil Procedure Rules*, 2010 provide for extension of time for purposes of filling of appeals out of time.



16. Pursuant to all the provisions, it is clear that extension of time to enable a party file an appeal involves the exercise of judicial discretion.
17. The principles that govern the exercise of discretion are well settled. See *Leo Sila Mutiso V Hellen Wangari Mwangi* [1999] 2EA 231.
18. The attendant factors were addressed in detail by the Supreme Court in *Nicholas Kiptoo Korir Salat V I.E.B.C & 7 Others* [2015] eKLR, and include the applicant must discharge the burden of proof, and the outcome is dependent on the circumstances of each case, the reason for the delay must be explained to the satisfaction of the court, which must equally consider whether the grant of the extension will prejudice the respondent and the application must have been filed without unreasonable delay. See *Mining Co. Ltd V Archdiocese of Nairobi Registered Trustee* Civil App. No. 190 of 2019 *Fakir Mohammed V Joseph Mugambi & 2 Others* [2005] eKLR.
19. As regards the length of the delay, the law had no minimum period but any delay must be satisfactorily explained. A plausible and satisfactory explanation is critical as held in *Andrew Kiplagat Chemongor V Paul Kipkorir Kibet* [2015] eKLR.
20. However, prolonged delay could disentitle the applicant leave as held in *Omar Shurie V Mariam Rashe Yatar* Civil Application No. 107 of 2020.
21. In *Njorogo V Kimani* [2022] KECA 1118 (KLR) Mativo JA stated:

An applicant for extension of time must show good and substantial reasons for the delay and prima facie good cause why the intended appeal should be heard while the first leg requires a satisfactory justification, the second leg only requires one to show that the grounds of appeal are arguable.
22. It is upon satisfaction of both the above that the court will use its discretion to grant the application.
23. The discretionary power however, is judicial in nature and must be confined to the rules of reason and justice as held in *Nicholas Kiptoo Korir Salat V I.E.B.C & 7 others* (*supra*).
24. In granting leave the court has to balance the competing interests of the applicant and those of the respondent a position well stated in *M/s Portreiz Maternity V James Karanga Kabia* Civil Appeal No. 63 of 1997...”

See also *Delmonte kenya Ltd V Patrick Njuguna Kariuki* [2015] eKLR, *Solewo Savings & Credit Co-operative Society Ltd V Mwamburi*, Civil Application No.032 of 2022 [2023] KECA 38 KLR, *Muchongi Kiragu V James Muchongi Kiragu* [1998] eKLR and *Ngei V Kibe & Antoher* Civil Application No. R359 of 2021.
25. I will now proceed to assess whether the instant application meets the two requirements as outlined by Mativo JA.
26. The sentiments of courts captured show that there must be a lucid explanation for the delay in filing of the appeal, a satisfactory explanation, and a plausible one.
27. In the instant application, the applicant deponed that the reason for the delay was the unavailability of certified typed proceedings necessary to prepare the Record of Appeal, an explanation the respondents counsel found unconvincing.
28. Barring the unavailability of certified and typed proceedings necessary to enable the applicant lodge an appeal against the judgment sought to be appealed against, the court is left wondering why the Memorandum of Appeal was not filed within 30 days, as the certified typed proceedings were being



awaited for. The request for proceedings and payment of the requisite charges would have sufficed in the circumstances.

29. Instructively, the proceedings were requested for on 26th May, 2025 prior to expiration of the thirty (30) days period, which would suggest that the applicant intended to file an appeal.
30. It is common knowledge that due to the backlog at the registry, typed and certified copied of proceedings, judgments and decrees take exceedingly long to be availed but the delay perse cannot be relied upon by a party as the sole reason for the failure to file a Memorandum of Appeal within the prescribed duration.
31. The court is in agreement with the respondent's contention that the two (2) months delay was not satisfactorily explained by the applicant.
32. Put in the alternative, the reason given by the applicant for its failure to file an appeal in time could not pass the "test of good and sufficient cause" under the proviso to Section 79G of the Civil Procedure Act.
31. In sum the reason does not meet the threshold of the law as some degree of inaction is discernible bearing in mind that the request for typed proceedings was paid for two (2) days prior to the expiration of the duration prescribed to file an appeal.
32. Having failed to satisfactorily explain the delay in filing of the appeal, the question of arguability of the appeal is of no moment as both must be satisfied for the low of the court's discretionary favour.
33. In the court's view, the applicant's application for extension to file an appeal is without merit.
34. Finally, having held as above, the prayer for stay of execution pending the hearing and determination of the intended appeal is equally unavailable in this instance.
35. The upshot of the foregoing is that the applicant's Notice of Motion dated 1st July, 2025 is for dismissal and it is accordingly dismissed.

Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 24TH DAY OF JULY, 2025.

DR. JACOB GAKERI

JUDGE

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 has 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.

DR. JACOB GAKERI

JUDGE

