



**Barasa v Public Service Board County Government of Trans-Nzoia & 4 others
(Petition 2 of 2022) [2025] KEELRC 1980 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1980 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
PETITION 2 OF 2022
MA ONYANGO, J
JULY 3, 2025**

BETWEEN

SILAS W BARASA PETITIONER

AND

**PUBLIC SERVICE BOARD COUNTY GOVERNMENT OF TRANS-
NZOIA 1ST RESPONDENT**

**SECRETARY, COUNTY GOVERNMENT OF TRANS-NZOIA 2ND
RESPONDENT**

ALBERT SOITA 3RD RESPONDENT

THE COUNTY GOVERNMENT OF TRANS-NZOIA 4TH RESPONDENT

THE COUNTY ASSEMBLY OF TRANS-NZOIA 5TH RESPONDENT

RULING

1. This ruling is in respect to only prayer 6 in the Notice of Motion dated 11th March 2024 filed by the 4th Respondent/Applicant as the other prayers in the said application are now spent. The 4th Respondent/Applicant had sought:-
2. That this honorable court be pleased to enlarge the time within which the 4th Respondent/Applicant can lodge and serve the Notice of Appeal and lodge the Appeal
3. The application is premised on the grounds that the 4th Respondent/Applicant is aggrieved by the holding of this Court and now seeks leave of this court to appeal the judgment out of time. The Applicant avers that the delay in lodging the intended appeal within time was occasioned by the indolence and unresponsiveness of the erstwhile counsel for the Applicant, which resulted in the Applicant, accessing the Judgment belatedly. It is the Applicant's contention that notwithstanding the delay in accessing the Judgment, it has moved expeditiously without undue delay to lodge the instant



Application. The Applicant maintains that the intended appeal raises substantial constitutional and legal issues that need to be heard and determined and that the appeal is arguable with high chances of success.

4. The application is supported by the affidavit sworn by Truphosa Ambere, the Applicant's Country Secretary who reiterates the grounds upon which the application is premised upon.
5. The application is opposed. The 1st Respondent filed a replying affidavit sworn by its Chairman, Peter M. Wamoto on 26th March 2024 where he deposed inter alia that; the application is incompetent as leave to appeal out of time to the Court of Appeal can only be granted by the Court of Appeal; that the 4th Respondent has to date not filed the requisite notice of appeal and lastly, that the 4th Respondent has always been aware of the contents of the judgment of the court and had a copy as can be evidenced from the numerous correspondences over the same.
6. The application was disposed of by way of written submissions. The Applicant's written submissions are dated 25th June 2024 while the 1st Respondent's submissions are dated 16th May 2024. The submissions of the parties reiterate the contents of their rival affidavits.

Determination

7. I have considered the application and the rival arguments. The issues that present themselves for determination are:-
8. Whether this court has jurisdiction to entertain the instant appeal
9. Whether the Applicant has made a case for grant of an order for extension of time within which to file a Notice of Appeal.
10. On the first issue, the 1st Respondent in opposing the Applicant's prayer for extension to file the appeal to the Court of Appeal argued that this court has no jurisdiction to entertain an application for extension of time to lodge a Notice of Appeal out of time, and that jurisdiction is only in the Court of Appeal.
11. Section 7 of the [Appellate Jurisdiction Act](#) provides:-

“S. 7 Power of High Court to extend time

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:

Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.”

12. In the case of [Kenya Airports Authority & Another v Timothy Nduvi Mutungi](#), Court of Appeal, Civil Application NO. NAI 165 of 2013 (UR 113/2013) [2014] eKLR Githinji JA, observed as follows :-

“The application of 10th December, 2012 (the application for extension of time to lodge Notice of Appeal out of time), was properly made in the High Court as High Court has power to extend time for giving notice of intention to appeal pursuant to Rule 7 of the Court of Appeal Rules (sic) (clearly meant Section 7 of the [Appellate Jurisdiction Act](#)) which provides: - (Section 7 of the [Appellate Jurisdiction Act](#) set down) ... Since the application for



extension of time for lodging a notice of appeal made in the High Court was competent and which the High Court should have determined..."

13. From the above, it follows that this court has unfettered discretion to extend time for giving notice of appeal.
14. On the second issue, it is trite that an Applicant seeking an order for extension of time to appeal out of time satisfies the court that the delay in filing the Notice of Appeal was not inordinate or deliberate. In the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (civil application No Nai 255 of 1997) (unreported), the court observed as follows:-

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay: secondly, the reason for the delay: thirdly (possibly), the chances of the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted”.
15. The Applicant’s reason for the delay in filing the appeal within the prescribed time, is that its erstwhile counsel was indolent and unresponsive as a result of which the Applicant assessed the judgment belatedly. Judgment was delivered in this matter on 30th November 2023 and the instant application was filed over three months later. In my view, the delay is inordinate and has not been well explained. The explanation given by the Applicant in my view is to be taken with a pinch of salt. Three months is a long time for a party keen on a matter affecting it not to follow up on its progress.
16. Further, the court is now privy to what was going on in this matter which constituted acts of contempt against the said decision committed by the Applicant’s officers which were the subject of the application dated 6th March, 2024 by the 1st Respondent and the application dated 6th March, 2024 by the 4th Respondent. both of which were the subject of this court’s ruling dated 5th December, 2024. The issues that were raised in the two applications point to the fact that the Applicant herein is not being generous with the truth when it blames its counsel for not filing appeal in time. The replying affidavit of Peter M. Wamoto, the Chairperson of the 1st Respondent, together with the attachments thereto, attest to this.
17. It is further in doubt if with the developments that have taken place since the application was filed, an appeal would still be viable.
18. The application before court is one that is granted by discretion of the court which must of course be exercised judiciously. A party coming to court to seek discretionary orders must thus do so with clean hands. The applicant herein has not come to this court with clean hands.
19. As was said in the case of *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR), extension of time is not a right of a party. The reason for the delay must be explained to the satisfaction of the court. The Applicant in the instant case has not given sufficient reason the court should exercise its discretion in favour of the Applicant.
20. I find no merit in the application dated 11th March 2024 and dismiss it with costs to the 1st Respondent.
21. Orders accordingly.

DATED, DELIVERED AND SIGNED ON THIS 3RD DAY OF JULY, 2025.

M. ONYANGO



JUDGE

