



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. 20 OF 2016**

**ANN WANJIRU MWANGI.....CLAIMANT/RESPONDENT**

*VERSUS*

**FAITH HOMES OF KENYA.....RESPONDENT/APPLICANT**

Mr. Makori Rioba for applicant

Wangira Okoba for respondent

**RULING**

1. The applicant seeks an order granting leave to the applicant to file a notice of appeal out of time. The application is on the grounds that the applicant was served a copy of the ruling sought to be appealed against after expiry of 14 days period.

2. The applicant cites Section 95 of the Civil Procedure Act, CAP 21 Laws of Kenya which provides:

**“[95] where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this 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.”**

3. Section 17 of the Employment and Labour Relations Court Act, Cap 234 B, 2014 provides: -

**“Appeals from the court shall lie to the court of appeal against any judgment, award order or decree issued by the court in accordance with Article 164 (3) of the constitution.”**

4. Rule 8 (1) of the Employment and Labour Relations Court (Procedure) Rules 2016 provides:

**“where any written law provides for an appeal to the court, an appellant shall file a memorandum of appeal with the court within the time specified for that appeal under the written law”.**

5. The Employment and Labour Relations Court Act and Procedure Rules are both silent on the time upon which appeals from the decisions of this court may be filed with the court.

6. Similarly, part VIII of the Civil Procedure Act, titled “Appeals to the High Court and Court of Appeal” provides no time frame within which appeals to or from the court may be filed. However, the Court of Appeal Rules provide for the time within which appeals may be filed to the court as follows: -

**“75 (1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.**

**(2) Every such notice shall, subject to rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal. “**

7. The Supreme Court of Kenya at Nairobi, in **Civil Application no. 35 of 2014, Fahim Yasin Twaha and Timamy Issa Abdala and other [2015] eKLR** laid down certain guiding principle citing Nick Salat case as regards extension of time as follows: -

*“.....it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application of extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.*

*“.....we derive the following as the underlying principles that a court should consider in exercising such discretion:*

***1. 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;***

***2. A party who seeks extension of time has the burden of laying a basis to the satisfaction of the Court;***

***3. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;***

***4. Whether there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;***

***5. Whether there will be any prejudice suffered by the respondents if extension is granted;***

***6. Whether the application has been brought without undue delay; and***

***7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”***

8. The application was brought without undue delay, the ruling having been delivered on 10<sup>th</sup> February 2017 and the application brought on 14<sup>th</sup> March 2017.

9. The court notes that interpretation of the proviso to Section 90 fo the Employment Act, 2007 is quite controversial and the intended appeal is arguable.

10. It is in the interest of justice that leave to file notice of appeal out of time is granted. The application is allowed.

**Dated, Signed and Delivered on this 10<sup>th</sup> Day of November 2017**

**MATHEWS NDERI NDUMA**

**JUDGE**