



REPUBLIC OF KENYA



KENYA LAW
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**Atinda v Nyamunda (Civil Application E070 of 2025)
[2025] KECA 1809 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1809 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E070 OF 2025
MSA MAKHANDIA, JA
OCTOBER 30, 2025**

BETWEEN

JOHN FELIX ATINDA APPLICANT

AND

JOSEPHINE NYAMUNDA RESPONDENT

(Being an application for extension of time to lodge Notice of appeal from the Judgment and decree of the High Court of Kenya at Busia, (Musyoka, J.,) dated 25th day of April, 2025)

RULING

(Being an application for extension of time to lodge Notice of appeal from the Judgment and decree of the High Court of Kenya at Busia, (Musyoka, J.,) dated 25th day of April, 2025

1. John Felix Atinda, “the applicant”, through Messrs. Moebe Wanyama & Associates, Advocates has filed the instant application seeking extension of time within which to file and serve the Notice of appeal.
2. This was in response to the judgment and decree issued on 25th April 2025, by the High Court of Kenya at Busia in the Civil Appeal Number E017 of 2024, by which the appeal by the applicant was dismissed. Dissatisfied with the judgment and decree, the applicant intends to lodge an appeal to this court. However, he is unable to do so of right as he has been caught up by the time strictures of this Court that require that appeals be lodged within fourteen days of the delivery of the ruling or judgment sought to be appealed against by way of notice of appeal.
3. It is for this reason, that the applicant has taken out this motion on notice dated 16th May 2025 under Rule 4 of this Court’s Rules seeking for extension of time within which to lodge and serve the Notice of appeal. In support of the application, the applicant contends that: the delivered judgment was sent by email to the applicant’s then advocates, Messrs. B.A. Okwiry & Associates two days later on 29th April 2025; aggrieved, he immediately instructed the law firm to lodge an appeal in this court; unfortunately



on 12th May 2025, the law firm informed him that it was yet to file the appeal and further that it would not be in a position to handle the matter any further; he had faith in the law firm and being a layperson in matters of law and procedure was not aware that the notice of appeal has to be lodged within fourteen days from the date of delivery of the judgment; the intended appeal was arguable and finally, that the respondents will not suffer any prejudice that cannot be compensated by an award of costs.

4. By the time the application was placed before the Deputy Registrar of this Court for directions, the respondent though served with the application, had not filed any papers in opposition to the application. Nonetheless she directed that the application be heard by way of written submissions and without appearance of counsel or parties. Accordingly, I will treat the application as unopposed.
5. As already stated, It is trite that an appeal to this Court ought to be entered within fourteen days of the date of the ruling or judgment sought to be appealed against by the filing of the notice of appeal. However, in the event of failure, this Court may for good cause admit an appeal after the prerequisite has elapsed, if it is satisfied as to the reasons for the delay.
6. Indeed Rule 4 of the Court of Appeal Rules 2022, pursuant to which this application has been made provides that this Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a Superior Court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act.
7. In the case of Andrew Kiplagat Chemaringo V. Paul Kipkorir Kibet [2018] e KLR this Court while considering the grounds upon which it will base its decision on applications of this nature opined that;

“...the law does not set out any minimum or maximum period of delay. All it states is that the delay should be satisfactorily explained, A plausible and satisfactory explanation for the delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
8. See also the court’s Ruling in Sila Mutiso vs Helen Wangari, (NRB) Civil Application No. 251 of 1997, where it held that;

“...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.”
9. The applicant has readily admitted that he has taken long for him to manifest his intention to lodge an appeal. Whereas the judgment was delivered on 25th April 2024, it was not until 16th May 2025 that he filed the instant application. The delay is about a year which might ordinarily appear inordinate. However, given the reasons for the delay which I am inclined to believe, and given further that, there is no counter argument to the reasons for the delay, I will not hold it against the applicant. This being a family matter, I see no prejudice that the respondent may suffer if the applicant is allowed to exercise and exhaust his undoubted right of appeal. Again, being a family dispute involving the welfare of the children, the question that arises is whether the High Court was right in dismissing the appeal. This obviously makes the intended appeal arguable
10. In ultimate I allow the application and direct that the applicant files his notice of appeal within the next fifteen days from the date of this ruling.

DATED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF OCTOBER, 2025.



ASIKE-MAKHANDIA

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

