



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**University of Nairobi v Orodó (Civil Application E533 of 2025)
[2025] KECA 1813 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1813 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E533 OF 2025
WK KORIR, JA
NOVEMBER 7, 2025**

BETWEEN

UNIVERSITY OF NAIROBI APPLICANT

AND

REUBEN ONDIGU ORODO RESPONDENT

(Being an application for leave to file an Appeal out of time against the judgment of the Employment and Labour Relations Court at Nairobi (M.N. Nduma, J.) dated 5th October 2023 in ELRC Cause No. E1191 of 2018)

RULING

1. When the applicant's Notice of Motion dated 3rd September 2025 was placed before me on 8th September 2025 for certification under rule 49(1) of the Court of Appeal Rules as urgent, I declined to certify it urgent. The applicant has, pursuant to rule 49(5) of the Court of Appeal Rules, asked for an inter-partes hearing on the question of urgency. In essence, the applicant wants the Court to certify as urgent its application for extension of the time within which to file a record of appeal against the judgment and decree issued by Nderi Nduma, J. on 5th October 2023 in Nairobi ELRC Cause No. 1191 of 2018.
2. Learned counsel, Donald B. Kipkorir swore an affidavit on 3rd September 2025 in support of the urgency wherein he averred that the time for filing the record of appeal against the impugned judgment lapsed on 9th August 2025 and that the record could not be filed due to leadership wrangles that had engulfed the applicant in the recent past, making it impossible to instruct counsel. Counsel averred that the application for enlargement of time was urgent and that it was in the interest of justice, rule of law, and *the Constitution* that the application be heard as a matter of urgency.
3. The applicant's request to review the decision on the issue of urgency was opposed by way of a replying affidavit sworn by the respondent on 14th October 2025. The respondent refuted the plea of urgency,



- averring that the impugned judgment was delivered over two years ago, and that the decretal sum having been paid, the applicant merely intends to subject the Court to conducting an academic exercise.
4. When this matter came up for hearing, learned counsel, Mr. Simiyu appeared for the applicant, while learned counsel, Mr. Onenga appeared for the respondent. Counsel for the parties while relying on their filed written submissions made brief oral highlights. However, I must mention that the applicant's submissions are not helpful, as they urge the application for extension of time rather than the question of certifying the matter urgent. It is therefore pointless to highlight the submissions.
 5. Turning to the submissions by the respondent's counsel, it was urged that there is no urgency in the application and that urgency is determined by conduct, not assertions. Counsel urged that, since the decretal sum had been paid in full, there was no live dispute between the parties, and that the applicant was guilty of its own inaction and would therefore suffer no prejudice. In conclusion, the respondent's counsel accused the applicant of material non-disclosure and argued that lack of candor is fatal to an application for discretionary relief.
 6. An application brought pursuant to rule 49 of the Court of Appeal Rules is one in which the Court is called upon to exercise its discretion to help an applicant jump the queue in respect of applications pending hearing before the Court. Thus, in exercising the discretion, the duty judge must act judiciously and upon reason and not arbitrarily, capriciously, or on whim-see *Githiaka vs. Nduriri* [2004] 1 KLR 67. Even though rule 49 does not provide the principles to be considered in certifying an application urgent, certain principles have been developed through judicial pronouncements to aid in disposal of applications brought under the rule.
 7. Some principles that can be gleaned from the jurisprudence of this Court regarding the question of certification of a matter as urgent are:
 - i. Applications are not certified as a matter of right or as a matter of course, and there must be a proper notice of appeal and an affidavit supporting the urgency, as required by rule 47(1) (now rule 49(1)) (*Kenya National Capital Corporation Limited vs. Galot & 5 others* [2022] KECA 536 (KLR)).
 - ii. The applicant must show that immediate assistance is needed from the Court, as any order that might be granted later will no longer provide the applicant the legal protection required (*Royal Sian Limited vs. Cove Investments Limited & 112 others* [2025] KECA 1386 (KLR)).
 - iii. Although the arguability of the intended appeal or appeal is relevant under rule 5(2)(b), whether an appeal is arguable does not fall for consideration in determining whether the matter should be certified urgent (*Savannah Heights Limited vs. Seruji Limited & Another* [2022] KECA 414 (KLR)).
 - iv. The applicant must act promptly when the need arises; failure to do so requires a reasonable explanation for the delay, otherwise the urgency may not be recognized, even if it is shown that irreparable harm will be suffered (*Njoroge vs. Nduati & Another* [2025] KECA 82 (KLR)).
 - v. The applicant's response to events must exhibit urgency beyond just the existence of prejudicial circumstances (*Njoroge vs. Nduati & Another* (supra)).
 - vi. The applicant must act promptly when the need arises and not wait until an event takes place that threatens his interest before moving the Court (*Sheth & Another vs. Sampa Investment Limited & Another* [2023] KECA 94 (KLR)).
 - vii. Public interest and addressing ongoing wrongs or disobedience of court orders are also significant factors.



8. The list is not exhaustive, and the principles are applied according to the circumstances of each case. I have considered the request to review my decision in light of the foregoing principles. Even though the applicant surmounted the jurisdictional threshold by filing an affidavit in support of urgency, it fails to meet the other principles. There is no doubt that the applicant already paid the decretal sum to the respondent. Counsel argued from the bar that the urgency was to help secure a refund of the decretal amount should the appeal succeed. In my view, the applicant has failed to demonstrate that it requires immediate assistance from the Court, and that if the application for enlargement of time is not heard in priority to other queued applications, any order that it might later be granted will by then no longer be capable of providing it with the legal protection it requires. In an attempt to explain the delay, the applicant blames leadership wrangles within its ranks. However, that, in my view, does not warrant jumping the queue. That is an issue that falls for consideration by the Judge who will be handling the application for extension of time. Additionally, the application the applicant sought to be certified urgent was one for the extension of time to file an appeal. In my view, a party that has no respect for the timelines provided in the rules of the Court cannot benefit from the Court's discretion to jump the queue through certification of urgency.
9. The upshot of the above reasoning is that there is nothing to make me change the position I took on 8th September 2025 when I declined to certify urgent the applicant's Notice of Motion for extension of time. The applicant's Notice of Motion dated 3rd September 2025 for extension of the of time for filing the appeal must be queued. Accordingly, I once again decline to certify the applicant's application as urgent.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025.

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

Deputy Registrar.

