

**IN THE COURT OF APPEAL
AT NAKURU**

(CORAM: MATIVO, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAK 37 OF

2020 BETWEEN

NATHAN KIPRUTO KEMBOI.....APPLICANT

AND

UNIVERSITY OF ELDORET.....RESPONDENT

(Being an application for leave to lodge a memorandum and record of appeal out of time from the Judgement and Decree of the Employment and Labour Relations Court of Kenya at Nakuru (Mbaru, J.) dated 21st November, 2019

in

ELRC Cause No.1 of 2019).

RULING

1. Nathan Kipruto (the applicant) has approached this Court by way of a notice of motion dated 13th July 2020 seeking two substantive reliefs namely that: (a) leave to lodge his memorandum and record of appeal out of time in the Court of Appeal from the Judgment and decree of Hon. Justice M. Mbaru of the 21st November 2019;

(b) the memorandum and record of appeal filed herewith be deemed as properly on record.
2. The application is premised on sections 95, 3A & 3B and 3B of the Civil Procedure Act, Order 50 Rule 6 of the Civil Procedure Rules, Sections 3, 3A, 3B and 5 of the Appellate Jurisdiction

Act and

Rules 4, 47 and 82 of the Court of Appeal Rules, 2022. It is supported by grounds on its body and a supporting affidavit sworn on 13th July 2020 by Andrew Okango who is the applicant's counsel on record.

3. The application is premised on the grounds that: (a) the notice of appeal was timely filed and lodged on 28th November 2019 and served upon the respondent on 4th December 2019; (b) the letter requesting for the proceedings dated 29th November 2019 was also served upon the respondent's counsel; (c) it took the registry 6 months to prepare and supply the applicant with certified copies of proceedings and Judgment; (d) a certificate of delay was issued on 29th June 2020 to the applicant; (e) the applicant's law firm downscaled its operation because of the covid-19 pandemic and as such the delay in bringing the application was occasioned by the court as evidenced in the certificate of delay; (f) that the intended appeal is arguable with high chances of success; (g) no prejudice will be suffered by the respondent if the application is allowed.
4. The application is opposed through the respondent's written submissions dated 1st December 2025.

5. On 2nd December 2025 at 14.00 Pm, the Deputy Registrar of this Court sent out an amended hearing notice via e-mail informing counsel for the parties herein that the instant application will be heard by way of written submissions and there shall be no appearance of counsel in Court or via video link. In that regard, the applicant and the respondent were reminded to comply with the Court's directions relating to service and filing of submissions before the hearing date.
6. As at today the 15th December 2025 at 9.00Am when the application came up for hearing before me, and as at the time of writing this ruling, the applicant had not complied with the Court's directions in the hearing notice. The directions were communicated to the parties respective e-mails: Paul Gicheru gicheruadv@gmail.com, info@gumboassociates.co.ke sammy mathai mathaimainaadv@gmail.com. I note that the applicant's counsel's email address in their pleadings filed in this Court and in their letter dated 21st November 2019 is gicheruadv@gmail.com, the same address used to communicate the Court's directions.
7. Rule 58 of the Court of Appeal Rules, 2022 stipulates as follows:

“1. If, on any day fixed for the hearing of an application, the applicant does not appear or comply with directions, the application may be dismissed, unless the Court sees fit to adjourn the hearing: Provided that the Court may order

that an application

may be heard by way of written submissions and where parties have filed written submissions, the Court shall consider the submissions.”

8. Pursuant to the above Rule and being duly satisfied that the parties were duly served as herein above stated, and despite being served, the applicant has failed to comply with the Court’s directions, I hereby dismiss the application dated 13th July 2020 in accordance with Rule 58 (1) of this Court’s Rules for non- compliance with the directions of this Court issued on 2nd December 2025.

Dated and delivered at Nakuru this 15th day of December, 2025.

J. MATIVO

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**. JUDGE OF
APPEAL**

*I certify that this is
a true copy of the
original.*

Signed.

DEPUTY REGISTRAR.